CIVIL CODE

Service by Certified Mail in Lieu of Registered

17. Wherever any notice or other communication is required by this code to be mailed by registered mail, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

(Added Ch. 426, Stats. 1959.)

Age of Majority

- **25.1.** The Legislature intends that any use of or reference to the words "age of majority," "age of minority," "adult," "minor," or words of similar intent in any instrument, order, transfer, or governmental communication whatsoever made in this state:
- (a) Before March 4, 1972, shall make reference to persons 21 years of age and older, or younger than 21 years of age, and

(b) On or after March 4, 1972, shall make reference to persons 18 years of age and older, or younger than 18 years of age.

Nothing contained herein or in Chapter 1748 of the Statutes of 1971 shall prevent the amendment of any court order, will, trust, contract, transfer, or instrument to refer to the new 18-year-old age of majority where such court order, will, trust, contract, transfer, or instrument is:

(1) In existence on March 4, 1972; and

- (2) Subject to amendment by law and where amendment is allowable or not prohibited by the terms thereof; and
 - (3) Otherwise subject to the laws of this state.

(Added Ch. 278, Stats. 1973. Effective January 1, 1974.)

Blind and Other Physically Disabled Persons

- **54.** (a) Individuals with disabilities have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.
- (b) "Disability," as used in this part, means any of the following with respect to an individual:
- (1) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
 - (2) A record of such an impairment.
 - (3) Being regarded as having such an impairment.
- (c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

(Amended Sec. 1, Ch. 498, Stats. 1996. Effective January 1, 1997.)

Emancipated Minor

- **62.** Any person under the age of 18 years who comes within the following description is an emancipated minor:
- (a) Who has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or
- (b) Who is on active duty with any of the armed forces of the United States of America; or
 - (c) Who has received a declaration of emancipation pursuant to Section 64.
 - (Amended Ch. 523, Stats. 1979. Effective September 7, 1979.)
- **63.** An emancipated minor shall be considered as being over the age of majority for the following purposes:
- (a)pFor the purpose of consenting to medical, dental, or psychiatric care, without parental consent, knowledge, or liability.
 - (b) pFor the purpose of his capacity to enter into a binding contract.
 - (c) For the purpose of his capacity to sue and be sued in his own name.
 - (d) For the purpose of his right to support by his parents.
 - (e) pFor purposes of the rights of his parents to his earnings, and to control him.
 - (f)bFor the purpose of establishing his own residence.
 - (g)pFor the purpose of buying or selling real property.
- (h)pFor purposes of the application of Sections 300 and 601 of the Welfare and Institutions Code.
 - (i) For purposes of applying for a work permit pursuant to Section 49110 of the

Education Code without the request of parents or guardian.

- (j) For the purpose of ending all vicarious liability of the minor's parents or guardian for the minor's torts; provided, that nothing in this section shall affect any liability of a parent, guardian, spouse, or employer imposed by the Vehicle Code, or any vicarious liability which arises from an agency relationship.
 - (k) For the purpose of enrolling in any school or college. (Amended Ch. 523, Stats. 1979. Effective September 7, 1979.)
- **66.** A person who, in good faith, has examined a minor's identification card and relies upon a minor's representation that he is emancipated, shall have the same rights and obligations as if the minor were in fact emancipated at the time of the representation.

(Added Ch. 1059, Stats. 1978. Effective January 1, 1979.)

68. No public entity or employee shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in the Department of Motor Vehicles records system or identification cards as provided in this part.

(Added Ch. 1059, Stats. 1978. Effective January 1, 1979.)

Definitions

799.24. (a) "Recreational vehicle" means a recreational vehicle as defined in Section 18010 or the Health and Safety Code.

(Repealed and Added Ch. 1160, Stats. 1986. Effective January 1, 1991.)

Definitions of Fraud and Deceit

- **1572.** Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:
- 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- 2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- 3. The suppression of that which is true, by one having knowledge or belief of that fact;
 - 4. A promise made without any intention of performing it; or,
 - 5. Any other act fitted to deceive.

1573. Constructive fraud consists:

- 1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or,
- 2. In any such act or omission as the law specially declares to be faaudulent, without respect to actual fraud.
- **1633.** (a) Notwithstanding any other provision of law, an application by a prospective customer to enter into a brokerage agreement with a broker-dealer, which application is transmitted electronically and is accompanied by the prospective customer's electronic signature or digital signature as described in subdivisions (d), (e), (f), and (g), shall be deemed, upon acceptance by the broker-dealer, to be a fully executed, valid, enforceable, and irrevocable written contract, unless grounds exist which would render any other contract invalid, unenforceable, or revocable.
- (b) Nothing in this section abrogates or limits any existing law that would otherwise apply to contracts governed by this section, or any theory of liability or any remedy otherwise available at law.
- (c) "Broker-dealer," for purposes of this section, means any broker-dealer licensed pursuant to Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code or exempted from licensing pursuant thereto.
- (d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (e) "Electronic record" means a record created, generated, sent, communicated, received, or stored electronically.
- (f) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.
- (g) "Digital signature," for the purposes of this section, means an electronic identifier, created by a computer, that is intended by the party using it to have the same force and effect as the use of a manual signature. The use of a digital signature shall have the same force or effect as a manual signature if it embodies all of the following attributes:

(1) It is unique to the person using it.

(2) It is capable of verification.

- (3) It is under the sole control of the person using it.
- (4) It is linked to data in a manner that if the data is changed, the digital signature is invalidated.
- (h) The use of an electronic signature or digital signature shall have the same force or effect as a manual signature.
- (i) The application that is transmitted electronically pursuant to subdivision (a) shall comply with all applicable federal and state securities laws and regulations relating to disclosures to prospective customers. Unless those laws and regulations currently require disclosures to be displayed or printed in bold, to be of specific type or print size, and to be placed prominently at specified locations within the application, the disclosures shall be displayed prominently and printed in capital letters, in bold type and displayed or printed immediately above the signature line. Disclosures shall be written in plain English. The full text of the disclosures shall be contained in the application as required by this subdivision.
- (j) Whenever a disclosure to a prospective customer is required under federal or state law or regulation to be confirmed as having been made, the application that is transmitted electronically pursuant to subdivision (a) shall provide a means by which the prospective customer shall confirm that he or she has read the disclosure.

(Added Sec. 1, Ch. 213, Stats. 1999. Effective July 28, 1999.)

1710. A deceit, withing the meaning of the last section, is either:

- 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true:
- 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
- 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
 - 4. A promise, made without any intention of performing it.

Sale of Merchandise with Identification Number Defaced

1710.1. Any person who, with intent to defraud, sells or disposes of a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe, vacuum cleaner, dictaphone, watch, watch movement, watchcase, or any other mechanical or electrical device, appliance, contrivance, material, piece of apparatus or equipment, from which the manufacturer's nameplate, serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed, is civilly liable to the manufacturer in the sum of five hundred dollars (\$500) per transaction and civilly liable to the purchaser for treble the actual damages sustained by the purchaser.

This section does not apply to those cases or instances where any of the changes or alterations enumerated in this section have been customarily made or done as an established practice in the ordinary and regular conduct of business by the original manufacturer or his duly appointed direct representative or under specific authorization from the original manufacturer.

(Added Ch. 1713, Stats. 1971. Effective March 4, 1971.)

Responsibility for Willful Acts and Negligence

- 1714. (a) Every one is responsible, not only for the result of his **or her** willful acts, but also for an injury occasioned to another by his **or her** want of ordinary care or skill in the management of his **or her** property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself **or herself**. **The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section.** The extent of liability in **these** cases is defined by the Title on Compensatory Relief.
- (b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal.3d 153), Bernhard v. Harrah's Club (16 Cal.3d 313), and Coulter v. Superior Court (21 Cal.3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not

the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages

(Amended Sec. 1, Ch. 913, Stats. 2002. Effective January 1, 2003.)

- **1785.15.** (a) A consumer credit reporting agency shall supply files and information required under Section 1785.10 during normal business hours and on reasonable notice. In addition to the disclosure provided by this chapter and any disclosures received by the consumer, the consumer has the right to request and receive all of the following:
- (1) Either a decoded written version of the file or a written copy of the file, including all information in the file at the time of the request, with an explanation of any code used.
- (2) A credit score for the consumer, the key factors, and the related information, as defined in and required by Section 1785.15.1.
- (3) A record of all inquiries, by recipient, which result in the provision of information concerning the consumer in connection with a credit transaction that is not initiated by the consumer and which were received by the consumer credit reporting agency in the 12-month period immediately preceding the request for disclosure under this section.
- (4) The recipients, including end users specified in Section 1785.22, of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:
 - (A) For employment purposes within the two-year period preceding the request.
 - (B) For any other purpose within the 12-month period preceding the request.
- Identification for purposes of this paragraph shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. If requested by the consumer, the identification shall also include the address of the recipient.
 - (b) Files maintained on a consumer shall be disclosed promptly as follows:
- (1) In person, at the location where the consumer credit reporting agency maintains the trained personnel required by subdivision (d), if he or she appears in person and furnishes proper identification.
- (2) By mail, if the consumer makes a written request with proper identification for a copy of the file or a decoded written version of that file to be sent to the consumer at a specified address. A disclosure pursuant to this paragraph shall be deposited in the United States mail, postage prepaid, within five business days after the consumer's written request for the disclosure is received by the consumer credit reporting agency. Consumer credit reporting agencies complying with requests for mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after the mailings leave the consumer *credit* reporting agencies.
- (3) A summary of all information contained in files on a consumer and required to be provided by Section 1785.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure.
- (4) Information in a consumer sile required to be provided in writing under this section may also be disclosed in another form if authorized by the consumer and if available from the consumer credit reporting agency. For this purpose a consumer may request disclosure in person pursuant to Section 1785.10, by telephone upon disclosure of proper identification by the consumer, by electronic means if available from the consumer credit reporting agency, or by any other reasonable means that is available from the consumer credit reporting agency.
- (c) "Proper identification," as used in subdivision (b) means that information generally deemed sufficient to identify a person. Only if the consumer is unable to reasonably identify himself or herself with the information described above, may a consumer credit reporting agency require additional information concerning the consumer"s employment and personal or family history in order to verify his or her identity.
- (d) The consumer credit reporting agency shall provide trained personnel to explain to the consumer any information furnished him or her pursuant to Section 1785.10.
- (e) The consumer shall be permitted to be accompanied by one other person of his or her choosing, who shall furnish reasonable identification. A consumer credit reporting

agency may require the consumer to furnish a written statement granting permission to the consumer credit reporting agency to discuss the consumer's file in that person's presence.

(f) Any written disclosure by a consumer credit reporting agency to any consumer pursuant to this section shall include a written summary of all rights the consumer has under this title and in the case of a consumer credit reporting agency which compiles and maintains consumer credit reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer credit reporting agency. The written summary of rights required under this subdivision is sufficient if in substantially the following form:

"You have a right to obtain a copy of your credit file from a consumer credit reporting agency. You may be charged a reasonable fee not exceeding eight dollars (\$8). There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The consumer credit reporting agency must provide someone to help you interpret the information in your credit file.

You have a right to dispute inaccurate information by contacting the consumer credit reporting agency directly. However, neither you nor any credit repair company or credit service organization has the right to have accurate, current, and verifiable information removed from your credit report. Under the Federal Fair Credit Reporting Act, the consumer credit reporting agency must remove accurate, negative information from your report only if it is over seven years old. Bankruptcy information can be reported for 10 years.

If you have notified a consumer credit reporting agency in writing that you dispute the accuracy of information in your file, the consumer credit reporting agency must then, within 30 business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the consumer credit reporting agency.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the consumer credit reporting agency to keep in your file, explaining why you think the record is inaccurate. The consumer credit reporting agency must include your statement about disputed information in a report it issues about you.

You have a right to receive a record of all inquiries relating to a credit transaction initiated in 12 months preceding your request. This record shall include the recipients of any consumer credit report.

You may request in writing that the information contained in your file not be provided to a third party for marketing purposes.

You have a right to place a "security alert" in your credit report, which will warn anyone who receives information in your credit report that your identity may have been used without your consent and that recipients of your credit report are advised, but not required, to verify your identity prior to issuing credit. The security alert may prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that taking advantage of this right may delay or interfere with the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. If you place a security alert on your credit report, you have a right to obtain a free copy of your credit report at the time the 90-day security alert period expires. A security alert may be requested by calling the following toll-free telephone number: (Insert applicable toll-free telephone number).

You have a right to place a "security freeze"" on your credit report, which will prohibit a consumer credit reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to

remove the freeze on your credit report or authorize the release of your credit report for a specific party or period of time after the freeze is in place. To provide that authorization you must contact the consumer credit reporting agency and provide all of the following:

(1) The personal identification number or password.

(2) Proper identification to verify your identity.

(3) The proper information regarding the third party who is to receive the credit report or the period of time for which the report shall be available.

A consumer credit reporting agency must authorize the release of your credit report no later than three business days after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer credit reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.

If you are a victim of identity theft and provide to a consumer credit reporting agency a copy of a valid police report or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status describing your circumstances, the following shall apply:

(1) You have a right to have any information you list on the report as allegedly fraudulent promptly blocked so that the information cannot be reported. The information will be unblocked only if (A) the information you provide is a material misrepresentation of the facts, (B) you agree that the information is blocked in error, or (C) you knowingly obtained possession of goods, services, or moneys as result of the blocked transactions. If blocked information is unblocked you will be promptly notified.

(2) Beginning July 1, 2003, you have a right to receive, free of charge and upon request, one copy of your credit report each month for up to 12 consecutive months."

(Amended Sec. 1, Ch. 860, Stats. 2002. Effective January 1, 2003.)

1785.15.3. (a) In addition to any other rights the consumer may have under this title, every consumer credit reporting agency, after being contacted by telephone, mail, or in person by any consumer who has reason to believe he or she may be a victim of identity theft, shall promptly provide to that consumer a statement, written in a clear and conspicuous manner, describing the statutory rights of victims of identity theft under this title.

(b) Every consumer credit reporting agency shall, upon the receipt from a victim of identity theft of a police report prepared pursuant to Section 530.6 of the Penal Code, or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status regarding the public offenses described in Section 530.5 of the Penal Code, provide the victim, free of charge and upon request, with up to 12 copies of his or her file during a consecutive 12-month period, not to exceed one copy per month, following the date of the police report. Notwithstanding any other provision of this title, the maximum number of free reports a victim of identity theft is entitled to obtain under this title is 12 per year, as provided by this subdivision.

(c) Subdivision (a) does not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or agencies and that does not maintain a permanent database of credit information from which new credit reports are produced.

(d) The provisions of this section shall become effective July 1, 2003.

(Added Sec. 2, Ch. 860, Stats. 2002. Effective January 1, 2003. Operative July 1, 2003.)

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time and without charge, reinvestigate and record the current status of the disputed information before the end of the 30-business-day period beginning on the date the

agency receives notice of the dispute from the consumer or user, unless the consumer credit reporting agency has reasonable grounds to believe and determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information, as requested by the consumer credit reporting agency, to investigate the dispute. Unless the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, before the end of the five-business-day period beginning on the date the consumer credit reporting agency receives notice of dispute under this section, the agency shall notify any person who provided information in dispute at the address and in the manner specified by the person. A consumer credit reporting agency may require that disputes by consumers be in writing.

- (b) In conducting that reinvestigation the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer by mail or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency, within five business days after that determination is made that it is terminating its reinvestigation of the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If the disputed item of information is found to be inaccurate, missing, or can no longer be verified by the evidence submitted, the consumer credit reporting agency shall promptly add, correct, or delete that information from the consumer's file.
- (c) No information may be reinserted in a consumer"s file after having been deleted pursuant to this section unless the person who furnished the information certifies that the information is accurate. If any information deleted from a consumer's file is reinserted in the file, the consumer credit reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency. As part of, or in addition to, this notice the consumer credit reporting agency shall, within five business days of reinserting the information, provide the consumer in writing (1) a statement that the disputed information has been reinserted, (2) a notice that the agency will provide to the consumer, within 15 days following a request, the name, address, and telephone number of any furnisher of information contacted or which contacted the consumer credit reporting agency in connection with the reinsertion, (3) the toll-free telephone number of the consumer credit reporting agency that the consumer can use to obtain this name, address, and telephone number, and (4) a notice that the consumer has the right to a reinvestigation of the information reinserted by the consumer credit reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.
- (d) A consumer credit reporting agency shall provide written notice to the consumer of the results of any reinvestigation under this subdivision, within five days of completion of the reinvestigation. The notice shall include (1) a statement that the reinvestigation is completed, (2) a consumer credit report that is based on the consumer"s file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the consumer credit report as a result of those revisions to the consumer's file and a description of any changes made or sought by the consumer that were not made and an explanation why they were not made, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer credit reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, (6) a notice that the consumer has the right to request that the consumer credit reporting agency furnish notifications under subdivision (h), (7) a notice that the dispute will remain on file with the agency as long as the credit information is used, and (8) a statement about the details of the dispute will be furnished to any recipient as long as the credit information is retained in the agency's data base. A consumer credit reporting agency shall provide the notice pursuant to this subdivision respecting the procedure used to determine the accuracy and completeness of information, not later than 15 days after receiving a request from the consumer.
- (e) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

- (f) If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer"s file pursuant to subdivision (c), the consumer may file a brief statement setting forth the nature of the dispute. The consumer credit reporting agency may limit these statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.
- (g) Whenever a statement of dispute is filed, the consumer credit reporting agency shall, in any subsequent consumer credit report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.
- (h) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a statement of dispute pursuant to subdivision (f), the consumer credit reporting agency, at the request of the consumer, shall furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (f). This notification shall be furnished to any person designated by the consumer who has, within two years prior to the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for employment purposes, or who has, within 12 months of the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for any other purpose, if these consumer credit reports contained the deleted or disputed information. The consumer credit reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification. The disclosure shall be made at or prior to the time the information is deleted pursuant to this section or the consumer's statement regarding the disputed information is received pursuant to subdivision (f).
- (i) A consumer credit reporting agency shall maintain reasonable procedures to prevent the reappearance in a consumer's file and in consumer credit reports of information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (c).
- (j) If the consumer"s dispute is resolved by deletion of the disputed information within three business days, beginning with the day the consumer credit reporting agency receives notice of the dispute in accordance with subdivision (a), and provided that verification thereof is provided to the consumer in writing within five business days following the deletion, then the consumer credit reporting agency shall be exempt from requirements for further action under subdivisions (d), (f), and (g).
- (k) If a consumer submits to a credit reporting agency a copy of a valid police report, or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status, filed pursuant to Section 530.5 of the Penal Code, the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of a violation of Section 530.5 of the Penal Code so that the information cannot be reported. The consumer credit reporting agency shall promptly notify the furnisher of the information that the information has been so blocked. Furnishers of information and consumer credit reporting agencies shall ensure that information is unblocked only upon a preponderance of the evidence establishing the facts required under paragraph (1), (2), or (3). The permanently blocked information shall be unblocked only if: (1) the information was blocked due to a material misrepresentation of fact by the consumer or fraud, or (2) the consumer agrees that the blocked information, or portions of the blocked information, were blocked in error, or (3) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions. If blocked information is unblocked pursuant to this subdivision, the consumer shall be promptly notified in the same manner as consumers are notified of the reinsertion of information pursuant to subdivision (c). The prior presence of the blocked information in the consumer credit reporting agency"s file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys. For the purposes of this subdivision, fraud may be demonstrated by circumstantial evidence. In unblocking information pursuant to this subdivision, furnishers and consumer credit reporting agencies shall be subject to their respective requirements pursuant to this title regarding the completeness and accuracy of information.
 - (1) In unblocking information as described in subdivision (k), a consumer reporting

agency shall comply with all requirements of this section and 15 U.S.C. Sec. 1681i relating to reinvestigating disputed information. In addition, a consumer reporting agency shall accept the consumer's version of the disputed information and correct or delete the disputed item when the consumer submits to the consumer reporting agency documentation obtained from the source of the item in dispute or from public records confirming that the report was inaccurate or incomplete, unless the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the documentation submitted and notifies the consumer in writing of that decision, explaining its reasons for unblocking the information and setting forth the specific, verifiable facts on which the decision was based.

(m) Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer credit reporting agency is void. A lender shall not have liability under any contractual provision for disclosure of a credit score.

(Amended Sec. 3, Ch. 354, Stats. 2001. Effective January 1, 2002.)

1785.16.3. The provisions of subdivisions (k) and (l) of Section 1785.16 do not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or agencies, and that does not maintain a permanent database of credit information from which new credit reports are produced.

(Added Sec. 2, Ch. 1029, Stats. 2002. Effective September 28, 2002.)

Consumer Warranty Protection

- **1790.** This chapter may be cited as the "Song-Beverly Consumer Warranty Act." (Added Ch. 1333, Stats. 1970.)
- **1790.1.** Any waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void.

(Added Ch. 1333, Stats. 1970.)

1790.3. The provisions of this chapter shall not affect the rights and obligations of parties determined by reference to the Commercial Code except that, where the provisions of the Commercial Code conflict with the rights guaranteed to buyers of consumer goods under the provisions of this chapter, the provisions of this chapter shall prevail.

(Added Ch. 1333, Stats. 1970.)

1790.4. The remedies provided by this chapter are cumulative and shall not be construed as restricting any remedy that is otherwise available, and, in particular, shall not be construed to supplant the provisions of the Unfair Practices Act.

(Amended Ch. 416, Stats. 1976.)

1791. As used in this chapter:

- (a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.
- (b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber or leather or similar fabric

- natural or synthetic yarn, fiber, or leather or similar fabric.

 (d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of consumption or use.
- (e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.
- (f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.

- (g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.
 - (h) "Lessee" means an individual who leases consumer goods under a lease.
 - (i) "Lessor" means a person who regularly leases consumer goods under a lease.
- (j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.
- (k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for these goods.
- (1) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.
- (m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).
 - (n) "Sale" means either of the following:
 - (1) **Th**e passing of title from the seller to the buyer for a price.
 - (2) A consignment for sale.
- (o) "Service contract" means a contract in writing to perform, for an additional cost, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.
- (p) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:
 - (1) Providing service contract sellers with service contract forms.
 - (2) Participating in the adjustment of claims arising from service contracts.
- (3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2 of the Business and Professions Code. A service contract administrator shall not be an obligor on a service contract.
- (q) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.
- (r) "Service contractor" means a service contract administrator or a service contract seller.
- (s) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code, and unless they are intended to assist the limited vision of the person so disabled.
- (t) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.
- (u) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, room air-conditioner, or other kind of appliance product normally used or sold for personal, family, or household purposes.
- (v) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product

for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars (\$50).

(w) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before *January 1, 2008*, deletes or extends that date.

(Amended Sec. 63, Ch. 405, Stats. 2002. Effective January 1, 2003.)

NOTE: The preceding section is repealed on January 1, 2008, and the following section becomes operative.

1791. As used in this chapter:

- (a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.
- (b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any of these businesses.
- (c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material,
- natural or synthetic yarn, fiber, or leather or similar fabric.
 (d) "Consumables" means any product that is intended. (d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of consumption or use.
- (e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in
- purchases, consignments, or contracts for sale of consumer goods.

 (f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.
- (g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.
 - (h) "Lessee" means an individual who leases consumer goods under a lease.
 - (i) "Lessor" means a person who regularly leases consumer goods under a lease.
- (j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.
- (k) "Place of business" means, for the purposes of any retail seller that sells
- consumer goods by catalog or mail order, the distribution point for consumer goods.

 (1) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.
- (m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).
 - (n) "Sale" means either of the following:
 - (1) **The** passing of title from the seller to the buyer for a price.
 - (2) A consignment for sale.
- (o) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.
- (p) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code and unless they are

intended to assist the limited vision of the person so disabled.

- (q) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.
- (r) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, or room air-conditioner normally used or sold for personal, family, or household purposes.
- (s) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars (\$50).

This section shall become operative on January 1, 2008.

(Amended Sec. 62, Ch. 405, Stats. 2002. Effective January 1, 2003.)

1791.1. As used in this chapter:

- (a) "Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:
 - (1) Pass without objection in the trade under the contract description.
 - (2) Are fit for the ordinary purposes for which such goods are used.
 - (3) Are adequately contained, packaged, and labeled.
 - (4) Conform to the promises or affirmations of fact made on the container or label.
- (b) "Implied warranty of fitness" means (1) that when the retailer, distributor, or manufacturer has reason to know any particular purpose for which the consumer goods are required, and further, that the buyer is relying on the skill and judgment of the seller to select and furnish suitable goods, then there is an implied warranty that the goods shall be fit for such purpose and (2) that when there is a sale of an assistive device sold at retail in this state, then there is an implied warranty by the retailer that the device is specifically fit for the particular needs of the buyer.
- (c) The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above.
- (d) Any buyer of consumer goods injured by a breach of the implied warranty of merchantability and where applicable by a breach of the implied warranty of fitness has the remedies provided in Chapter 6 (commencing with Section 2601) and Chapter 7 (commencing with Section 2701) of Division 2 of the Commercial Code, and, in any action brought under such provisions, Section 1794 of this chapter shall apply.

(Amended Ch. 1023, Stats. 1979. Effective January 1, 1980.)

1791.2. (a) "Express warranty" means:

- (1) A written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance; or
- (2) In the event of any sample or model, that the whole of the goods conforms to such sample or model.
- (b) It is not necessary to the creation of an express warranty that formal words such as "warrant" or "guarantee" be used, but if such words are used then an express warranty is created. An affirmation merely of the value of the goods or a statement purporting to be merely an opinion or commendation of the goods does not create a warranty.
- (c) Statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any limitation do not create an express warranty.

(Amended Ch. 991, Stats. 1978. Effective January 1, 1979.)

1791.3. As used in this chapter, a sale "as is" or "with all faults" means that the manufacturer, distributor, and retailer disclaim all implied warranties that would

otherwise attach to the sale of consumer goods under the provisions of this chapter. (Added Ch. 1333, Stats. 1970.)

1792. Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. The retail seller shall have a right of indemnity against the manufacturer in the amount of any liability under this section.

(Amended Ch. 991, Stats. 1978. Effective January 1, 1979.)

1792.1. Every sale of consumer goods that are sold at retail in this state by a manufacturer who has reason to know at the time of the retail sale that the goods are required for a particular purpose and that the buyer is relying on the manufacturer's skill or judgment to select or furnish suitable goods shall be accompanied by such manufacturer's implied warranty of fitness.

(Amended Ch. 991, Stats. 1978. Effective January 1, 1979.)

- **1792.2.** (a) Every sale of consumer goods that are sold at retail in this state by a retailer or distributor who has reason to know at the time of the retail sale that the goods are required for a particular purpose, and that the buyer is relying on the retailer's or distributor's skill or judgment to select or furnish suitable goods shall be accompanied by such retailer's or distributor's implied warranty that the goods are fit for that purpose.
- (b) Every sale of an assistive device sold at retail in this state shall be accompanied by the retail seller's implied warranty that the device is specifically fit for the particular needs of the buyer.

(Amended Ch. 1023, Stats. 1979. Effective January 1, 1980.)

1792.3. No implied warranty of merchantability and, where applicable, no implied warranty of fitness shall be waived, except in the case of a sale of consumer goods on an "as is" or "with all faults" basis where the provisions of this chapter affecting "as is" or "with all faults" sales are strictly complied with.

(Added Ch. 1333, Stats. 1970.)

- **1792.4.** (a) No sale of goods, governed by the provisions of this chapter, on an "as is" or "with all faults" basis, shall be effective to disclaim the implied warranty of merchantability or, where applicable, the implied warranty of fitness, unless a conspicuous writing is attached to the goods which clearly informs the buyer, prior to the sale, in simple and concise language of each of the following:
 - (1) The goods are being sold on as "as is" or "with all faults" basis.
 - (2) The entire risk as to the quality and performance of the goods is with the buyer.
- (3) Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.
- (b) In the event of sale of consumer goods by means of a mail order catalog, the catalog offering such goods shall contain the required writing as to each item so offered in lieu of the requirement of notification prior to the sale.

(Amended Ch. 1523, Stats. 1971. Operative January 1, 1972.)

1792.5. Every sale of goods that are governed by the provisions of this chapter, on an "as is" or "with all faults" basis, made in compliance with the provisions of this chapter, shall constitute a waiver by the buyer of the implied warranty of merchantability and, where applicable, of the implied warranty of fitness.

(Amended Ch. 1523, Stats. 1971. Operative January 1, 1972.)

1793. Except as provided in Section 1793.02, nothing in this chapter shall affect the right of the manufacturer, distributor, or retailer to make express warranties and with respect to consumer goods. However, a manufacturer, distributor, or retailer, in transacting a sale in which express warranties are given, may not limit, modify, or disclaim the implied warranties guaranteed by this chapter to the sale of consumer goods.

(Amended Ch. 1023, Stats. 1979. Effective January 1, 1980.)

1793.02. (a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other

laws." In lieu of the words "30 days" the retail seller may specify any longer period.

- (b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.
- (c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.
- (d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any of the following sales of assistive devices:

- (1) A catalog or similar sale, as defined in subdivision (q) of Section 1791, except a sale of a hearing aid.
 - (2) A sale which involves a retail sale price of less than fifteen dollars (\$15).

(3) A surgical implant performed by a physician and surgeon, or a restoration or dental prosthesis provided by a dentist.

- (f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.
- (g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.
- (h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections 1793.2 and 1793.3.

(Âmended Ch. 228, Stats. 1991. Effective January 1, 1992.)

- **1793.025.** (a) All new and used wheelchairs, including, but not limited to, wheelchairs that are motorized or have been otherwise customized to suit the needs of the user, shall be accompanied by the manufacturer's or lessor's written express warranty that the wheelchair is free of defects. The duration of the warranty shall be for a period of at least one year from the date of the first delivery of a new wheelchair to the consumer, or at least 60 days from the date of the first delivery of a used, refurbished, or reconditioned wheelchair to the consumer. If the written express warranty is not furnished to the consumer, the wheelchair nonetheless shall be deemed to be covered by the express warranty. This section shall not apply to wheelchairs manufactured specifically for athletic, competitive, or off-road use.
- (b) The provisions of this chapter for express warranties govern the express warranty described in subdivision (a), whether or not those provisions only apply to the sale, and not the lease, of goods.
- (c) A reasonable number of attempts have been made to conform a wheelchair to the express warranty if, within the warranty period or within one year of inception of the warranty, whichever occurs first, (1) the same nonconformity has been subject to repair four or more times by the manufacturer, lessor, or an agent thereof, and continues to exist, or (2) the wheelchair is out of service by reason of repair of nonconformities by the manufacturer, lessor, or an agent thereof, for a cumulative total of more than 30 calendar days since inception of the warranty.
- (d) No wheelchair that has been returned to the manufacturer, lessor, or an agent thereof, by the consumer for failure to repair a nonconformity after a reasonable number of attempts, either in this state or in another state pursuant to a similar statute of that state, may be sold or leased again in this state unless the reasons for the return are fully disclosed to the prospective buyer or lessee.

(e) If the wheelchair is out of service for a period of at least 24 hours for the repair of a nonconformity by the manufacturer, lessor, or agent thereof, a temporary replacement wheelchair shall be made available to the consumer, if requested. The provider of the temporary replacement wheelchair may not charge the consumer more than the cost to the provider to make the wheelchair available to the consumer. Nothing in this subdivision is intended to prevent a consumer and a provider from negotiating an agreement in which the provider assumes the cost of providing a temporary replacement wheelchair to the consumer.

(Amended Sec. 3, Ch. 461, Stats. 1995. Effective January 1, 1996.)

- **1793.03.** (a) Every manufacturer making an express warranty with respect to an electronic or appliance product described in subdivision (h), (i), (j), or (k) of Section 9801 of the Business and Professions Code, with a wholesale price to the retailer of not less than fifty dollars (\$50) and not more than ninety-nine dollars and ninety-nine cents (\$99.99), shall make available to service and repair facilities sufficient service literature and functional parts to effect the repair of a product for at least three years after the date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product.
- (b) Every manufacturer making an express warranty with respect to an electronic or appliance product described in subdivision (h), (i), (j), or (k) of Section 9801 of the Business and Professions Code, with a wholesale price to the retailer of one hundred dollars (\$100) or more, shall make available to service and repair facilities sufficient service literature and functional parts to effect the repair of a product for at least seven years after the date a product model or type was manufactured, regardless of whether the seven-year period exceeds the warranty period for the product.

(Added Ch. 547, Stats. 1986. Effective January 1, 1987.)

1793.05. Vehicle manufacturers who alter new vehicles into housecars shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer.

(Added Ch. 873, Stats. 1977. Effective January 1, 1978.)

- 1793.1. (a) (1) Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth *those* warranties in simple and readily understood language, which shall clearly identify the party making *the* express warranties, and which shall conform to the federal standards for disclosure of warranty terms and conditions set forth in the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. Sec. 2301 et seq.), and in the regulations of the Federal Trade Commission adopted pursuant to the provisions of that act. If the manufacturer, distributor, or retailer provides a warranty or product registration card or form, or an electronic online warranty or product registration form, to be completed and returned by the consumer, the card or form shall contain statements, each displayed in a clear and conspicuous manner, that do all of the following:
- (A) Informs the consumer that the card or form is for product registration.
 (B) Informs the consumer that failure to complete and return the card or form does not diminish his or her warranty rights.
- (2) Every work order or repair invoice for warranty repairs or service shall clearly and conspicuously incorporate in 10-point boldface type the following statement either on the face of *the* work order or repair invoice, or on the reverse *side*, or on an attachment to the work order or repair invoice: "A buyer of this product in California has the right to have this product serviced or repaired during the warranty period. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under other laws."

If the required notice is placed on the reverse side of the work order or repair invoice, the face of the work order or repair invoice shall include the following notice in 10-

point boldface type: "Notice to Consumer: Please read important information on back." A copy of the work order or repair invoice and any attachment shall be presented to the buyer at the time that warranty service or repairs are made.

(b) No warranty or product registration card or form, or an electronic online warranty or product registration form, may be labeled as a warranty

registration or a warranty confirmation.

- (c) The requirements imposed by this section on the distribution of any warranty or product registration card or form, or an electronic online warranty or product registration form, shall become effective on January 1, 2004.
- (d) This section does not apply to any warranty or product registration card or form that was printed prior to January 1, 2004, and was shipped or included with a product that was placed in the stream of commerce prior to January 1, 2004.
- (e) Every manufacturer, distributor, or retailer making express warranties and who elects to maintain service and repair facilities within this state pursuant to this chapter **shall perform one or more of the following:**
 - (1) At the time of sale, provide the buyer with the name and address of each service

and repair facility within this state.

- (2) At the time of the sale, provide the buyer with the name and address and telephone number of a service and repair facility central directory within this state, or the toll-free telephone number of a service and repair facility central directory outside this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer.
- (3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of *the* warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with *that* listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable.

(Amended Sec. 1, Ch. 306, Stats. 2002. Effective January 1, 2003.)

- **1793.2.** (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:
- (1) (A) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of those warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of the warranties.
- (B) As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work. However, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturers payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.
- (2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.
- (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.
- (b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as

possible following termination of the condition giving rise to the delay.

- (c) The buyer shall deliver nonconforming goods to the manufacturers service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturers expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.
- (d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.
- (2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.
- (A) In the case of replacement, the manufacturer shall replace the buyers vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.
- (B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.
- (C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(Amended Ch. 1232, Stats. 1992. Effective January 1, 1993.)

- 1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.
- (b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles on the odometer of the vehicle, whichever occurs first, one or more of the following occurs:
- (1) The same nonconformity results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the nonconformity has been subject to repair two or more times by the manufacturer or its agents, and the buyer or lessee has at least once directly notified the manufacturer of the need for the repair of the nonconformity.
- (2) The same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity.
- (3) The vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraphs (1) and (2) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraphs (1) and (2). The notification, if required, shall be sent to the address, if any, specified clearly and conspicuously by the manufacturer in the warranty or owner's manual. This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.
- (c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a thirdparty dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.
- (d) A qualified third-party dispute resolution process shall be one that does all of the following:
- (1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.
- (2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.
- (3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.
- (4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.
- (5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents

to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

- (6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.
- (7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.
- (8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.
- (9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.
- (e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:
- (1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.
- (2) "New motor vehicle" means a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New motor vehicle" also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.
- (3) "Motor home" means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.
- (f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.
- (2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

(Amended Sec. 1, Ch. 679, Stats. 2000. Effective January 1, 2001.)

1793.23. (a) The Legislature finds and declares all of the following:

(1) That the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers.

- (2) That, in states without this valuable warranty protection, used and irrepairable motor vehicles are being resold in the marketplace without notice to the subsequent purchaser.
- (3) That other states have addressed this problem by requiring notices on the title of these vehicles or other notice procedures to warn consumers that the motor vehicles were repurchased by a dealer or manufacturer because the vehicle could not be repaired in a reasonable length of time or a reasonable number of repair attempts or the dealer or manufacturer was not willing to repair the vehicle.
- (4) That these notices serve the interests of consumers who have a right to information relevant to their buying decisions.
- (5) That the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of "lemons" to this state for sale to the drivers of this state.
- (b) This section and Section 1793.24 shall be known, and may be cited as, the Automotive Consumer Notification Act.
- (c) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, any other state, or a federally administered district shall, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant to paragraph (2) of subdivision (d) of Section 1793.2, cause the vehicle to be retitled in the name of the manufacturer, request the Department of Motor Vehicles to inscribe the ownership certificate with the notation "Lemon Law Buyback," and affix a decal to the vehicle in accordance with Section 11713.12 of the Vehicle Code if the manufacturer knew or should have known that the vehicle is required by law to be replaced, accepted for restitution due to the failure of the manufacturer to conform the vehicle to applicable warranties pursuant to paragraph (2) of subdivision (d) of Section 1793.2, or accepted for restitution by the manufacturer due to the failure of the manufacturer to conform the vehicle to warranties required by any other applicable law of the state, any other state, or federal law.
- (d) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle in response to a request by the buyer or lessee that the vehicle be either replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer of the vehicle, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.
- (e) Any person, including any dealer, who acquires a motor vehicle for resale and knows or should have known that the vehicle was reacquired by the vehicle's manufacturer in response to a request by the last retail owner or lessee of the vehicle that it be replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.
- (f) Any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle when the vehicle's ownership certificate is inscribed with the notation "Lemon Law Buyback" shall, prior to the sale, lease, or ownership transfer of the vehicle, provide the transferee with a disclosure statement signed by the transferee that states:
- "THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION 'LEMON LAW BUYBACK'."
- (g) The disclosure requirements in subdivisions (d), (e), and (f) are cumulative with all other consumer notice requirements and do not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of subdivision (f) of Section 1793.22.
- (h) For purposes of this section, "dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of, a used motor vehicle or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers.
 - (Amended Sec. 7, Ch. 932, Stats. 1998. Effective January 1, 1999.)
- **1793.24.** (a) The notice required in subdivisions (d) and (e) of Section 1793.23 shall be prepared by the manufacturer of the reacquired vehicle and shall disclose all of the following:
 - (1) Year, make, model, and vehicle identification number of the vehicle.

- (2) Whether the title to the vehicle has been inscribed with the notation "Lemon Law
- (3) The nature of each nonconformity reported by the original buyer or lessee of the vehicle.
- (4) Repairs, if any, made to the vehicle in an attempt to correct each nonconformity reported by the original buyer or lessee.
- (b) The notice shall be on a form 8 1/2 x 11 inches in size and printed in no smaller than 10-point black type on a white background.

The form shall only contain the following information prior to it being filled out by the manufacturer:

WARRANTY BUYBACK NOTICE

(Check One)

This vehicle was repurchased by the vehicle's manufacturer after the last retail owner or lessee requested its repurchase due to the problem(s) listed below.

 \square THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK." Under California law, the manufacturer must warrant to you, for a one year period, that the vehicle is free of the problem(s) listed below.

V.I.N.	Year	Make	Model	
		•	•	
Problem(s) Reported by	Repairs Made, if any, to			
Original Owner	C	Correct Reported Problem(s)		
Signature of Manufacturer			Date	
Signature of Dealer(s)			Date	
2-8(-)				
Signature of Retail Buyer or Lessee			Date	
Eigeneure of freund Buyer of Bessee			2	
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(c) The manufacturer shall provide an executed copy of the notice to the manufacturer's transferee. Each transferee, including a dealer, to whom the motor vehicle is transferred prior to its sale to a retail buyer or lessee shall be provided an executed copy of the notice by the previous transferor. (Added Sec. 2, Ch. 503, Stats. 1995. Effective January 1, 1996.)

1793.26. (a) Any automobile manufacturer, importer, distributor, dealer, or lienholder who reacquires, or who assists in reacquiring, a motor vehicle, whether by judgment, decree, arbitration award, settlement agreement, or voluntary agreement, is prohibited from doing either of the following:

(1) Requiring, as a condition of the reacquisition of the motor vehicle, that a buyer or lessee who is a resident of this state agree not to disclose the problems with the vehicle experienced by the buyer or lessee or the nonfinancial terms of the reacquisition.

- (2) Including, in any release or other agreement, whether prepared by the manufacturer, importer, distributor, dealer, or lienholder, for signature by the buyer or lessee, a confidentiality clause, gag clause, or similar clause prohibiting the buyer or lessee from disclosing information to anyone about the problems with the vehicle, or the nonfinancial terms of the reacquisition of the vehicle by the manufacturer, importer, distributor, dealer, or lienholder.
- (b) Any confidentiality clause, gag clause, or similar clause in such a release or other agreement in violation of this section shall be null and void as against the public policy of this state.
- (c) Nothing in this section is intended to prevent any confidentiality clause, gag clause, or similar clause regarding the financial terms of the reacquisition of the vehicle.

(Amended Sec. 1, Ch. 679, Stats. 2000. Effective January 1, 2001.)

- 1793.3. If the manufacturer of consumer goods sold in this state for which the manufacturer has made an express warranty does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2 or does not make available to authorized service and repair facilities service literature and replacement parts sufficient to effect repair during the express warranty period, the buyer of such manufacturer's nonconforming goods may follow the course of action prescribed in either subdivision (a), (b), or (c), below, as follows:
- (a) Return the nonconforming consumer goods to the retail seller thereof. The retail seller shall do one of the following:
 - (1) Service or repair the nonconforming goods to conform to the applicable warranty.
- (2) Direct the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section.
- (3) Replace the nonconforming goods with goods that are identical or reasonably equivalent to the warranted goods.
- (4) Refund to the buyer the original purchase price less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.
- (b) Return the nonconforming consumer goods to any retail seller of like goods of the same manufacturer within this state who may do one of the following:
 - (1) Service or repair the nonconforming goods to conform to the applicable warranty.
- (2) Direct the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section.
- (3) Replace the nonconforming goods with goods that are identical or reasonably equivalent to the warranted goods.
- (4) Refund to the buyer the original purchase price less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.
- (c) Secure the services of an independent repair or service facility for the service or repair of the nonconforming consumer goods, when service or repair of the goods can be economically accomplished. In that event the manufacturer shall be liable to the buyer, or to the independent repair or service facility upon an assignment of the buyer's rights, for the actual and reasonable cost of service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent service dealer for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable.

The course of action prescribed in this subdivision shall be available to the buyer only after the buyer has followed the course of action prescribed in either subdivision (a) or (b) and such course of action has not furnished the buyer with appropriate relief. In no event, shall the provisions of this subdivision be available to the buyer with regard to consumer goods with a wholesale price to the retailer of less than fifty dollars (\$50). In no event shall the buyer be responsible or liable for service or repair costs charged by the independent repair or service facility which accepts service or repair of nonconforming consumer goods under this section. Such independent repair or service facility shall only be authorized to hold the manufacturer liable for such costs.

(d) Å retail seller to which any nonconforming consumer good is returned pursuant to subdivision (a) or (b) shall have the option of providing service or repair itself or directing the buyer to a reasonably close independent repair or service facility willing to accept service or repair under this section. In the event the retail seller directs the buyer to an independent repair or service facility, the manufacturer shall be liable for the reasonable cost of repair services in the manner provided in subdivision (c).

- (e) In the event a buyer is unable to return nonconforming goods to the retailer due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, the buyer shall give notice of the nonconformity to the retailer. Upon receipt of such notice of nonconformity the retailer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service or repair, or arrange for transporting the goods to its place of business. The reasonable costs of transporting the goods shall be at the retailer's expense. The retailer shall be entitled to recover all such reasonable costs of transporting nonconforming goods after delivery to the retailer until return of the goods to the buyer, when incurred by a retailer, shall be recoverable form the manufacturer pursuant to Section 1793.5. Written notice of nonconformity to the retailer shall constitute return of the goods for the purposes of subdivisions (a) and (b).
- (f) The manufacturer of consumer goods with a wholesale price to the retailer of fifty dollars (\$50) or more for which the manufacturer has made express warranties shall provide written notice to the buyer of the courses of action available to him under subdivision (a), (b), or (c).

(Amended Ch. 547, Stats. 1986. Effective January 1, 1987.)

- **1793.35.** (a) Where the retail sale of clothing or consumables is accompanied by an express warranty and such items do not conform with the terms of the express warranty, the buyer thereof may return the goods within 30 days of purchase or the period specified in the warranty, whichever is greater. The manufacturer may, in the express warranty, direct the purchaser to return nonconforming goods to a retail seller of like goods of the same manufacturer for replacement.
- (b) When clothing or consumables are returned to a retail seller for the reason that they do not conform to an express warranty, the retailer shall replace the nonconforming goods where the manufacturer has directed replacement in the express warranty. In the event the manufacturer has not directed replacement in the express warranty, the retailer may replace the nonconforming goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer for the goods, at the option of the retailer. Costs of reimbursement or replacement are recoverable by a retailer from the manufacturer in the manner provided in Section 1793.5.
- (c) Where the retail sale of draperies is not accompanied by an express warranty and the sale of such draperies is accompanied by a conspicuous writing disclaiming the retailer's implied warranty of merchantability on the fabric, the retailer's implied warranty of merchantability shall not apply to the fabric.

(Amended Ch. 991, Stats. 1978. Effective January 1, 1979.)

1793.4. Where an option is exercised in favor of service and repair under Section 1793.3, such service and repair must be commenced within a reasonable time, and, unless the buyer agrees in writing to the contrary, goods conforming to the applicable express warranties shall be tendered within 30 days. Delay caused by conditions beyond the control of the retail seller or his representative shall serve to extend this 30-day requirement. Where such a delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(Amended Ch. 991, Stats. 1978. Effective January 1, 1979.)

- 1793.5. Every manufacturer making express warranties who does not provide service and repair facilities within this state pursuant to subdivision (a) of Section 1793.2 shall be liable as prescribed in this section to every retail seller of such manufacturer's goods who incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods. The amount of such liability shall be determined as follows:
- (a) In the event of replacement, in an amount equal to the actual cost to the retail seller of the replaced goods, and cost of transporting the goods, if such costs are incurred plus a reasonable handling charge.
- (b) In the event of service and repair, in an amount equal to that which would be received by the retail seller for like service rendered to retail consumers who are not entitled to warranty protection, including actual and reasonable costs of the service and repair and the cost of transporting the goods, if such costs are incurred, plus a reasonable profit.
- (c) In the event of reimbursement under subdivision (a) of Section 1793.3, in an amount equal to that reimbursed to the buyer, plus a reasonable handling charge.

(Amended Ch. 1523, Stats. 1971. Operative January 1, 1972.)

1793.6. Except as otherwise provided in the terms of a warranty service contract, as specified in subdivision (a) of Section 1793.2, entered into between a manufacturer

and an independent service and repair facility, every manufacturer making express warranties whose consumer goods are sold in this state shall be liable as prescribed in this section to every independent serviceman who performs services or incurs obligations in giving effect to the express warranties that accompany such manufacturer's consumer goods whether the independent serviceman is acting as an authorized service and repair facility designated by the manufacturer pursuant to paragraph (1) of subdivision (a) of Section 1793.2 or is acting as an independent serviceman pursuant to subdivisions (c) and (d) of Section 1793.3. The amount of such liability shall be an amount equal to the actual and reasonable costs of the service and repair, including any cost for parts and any reasonable cost of transporting the goods or parts, plus a reasonable profit. It shall be a rebuttable presumption affecting the burden of producing evidence that the reasonable cost of service or repair is an amount equal to that which is charged by the independent serviceman for like services or repairs rendered to service or repair customers who are not entitled to warranty protection. Any waiver of the liability of a manufacturer shall be void and unenforceable.

(Added Ch. 416, Stats. 1976.)

- **1794.** (a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable
- (b) The measure of the buyer's damages in an action under this section shall include the rights of replacement or reimbursement as set forth in subdivision (d) of Section 1793.2, and the following:
- (1) Where the buyer has rightfully rejected or justifiably revoked acceptance of the goods or has exercised any right to cancel the sale, Sections 2711, 2712, and 2713 of the Commercial Code shall apply.
- (2) Where the buyer has accepted the goods, Sections 2714 and 2715 of the Commercial Code shall apply, and the measure of damages shall include the cost of repairs necessary to make the goods conform.
- (c) If the buyer establishes that the failure to comply was willful, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages. This subdivision shall not apply in any class action under Section 382 of the Code of Civil Procedure or under Section 1781, or with respect to a claim based solely on a breach of an implied
- (d) If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.
- (e) (1) Except as otherwise provided in this subdivision, if the buyer establishes a violation of paragraph (2) of subdivision (d) of Section 1793.2, the buyer shall recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times the amount of damages.
- (2) If the manufacturer maintains a qualified third-party dispute resolution process which substantially complies with Section 1793.22, the manufacturer shall not be liable for any civil penalty pursuant to this subdivision.
- (3) After the occurrence of the events giving rise to the presumption established in subdivision (b) of Section 1793.22, the buyer may serve upon the manufacturer a written notice requesting that the manufacturer comply with paragraph (2) of subdivision (d) of Section 1793.2. If the buyer fails to serve the notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.
- (4) If the buyer serves the notice described in paragraph (3) and the manufacturer complies with paragraph (2) of subdivision (d) of Section 1793.2 within 30 days of the service of that notice, the manufacturer shall not be liable for a civil penalty pursuant to this subdivision.
- (5) If the buyer recovers a civil penalty under subdivision (c), the buyer may not also recover a civil penalty under this subdivision for the same violation. (Amended Ch. 1232, Stats. 1992. Effective January 1, 1993.)

(a) Any retail seller of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.

- (b) Any independent serviceman of consumer goods injured by the willful or repeated violation of the provisions of this chapter may bring an action for the recovery of damages. Judgment may be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees.
 - (Amended Ch. 416, Stats. 1976.)
- 1794.3. The provisions of this chapter shall not apply to any defect or nonconformity in consumer goods caused by the unauthorized or unreasonable use of the goods following sale.

(Amended Ch. 1523, Stats. 1971. Operative January 1, 1972.)

- 1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to, or in lieu of, an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.
- (b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contract seller to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.
 - (c) The service contract shall contain all of the following items of information:
 - (1) A clear description and identification of the covered product.
- (2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.
- (3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.
- (4) A statement of the general obligation of the service contract seller in the same language set forth in subdivision (b), with equally clear and conspicuous statements of the following:
- (A) Any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs, or remedies that are excluded from the scope of the service contract.
- (B) **Any** other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls.
- (C) \emph{Any} additional services that the service contract seller will provide. (D) $\emph{Whether}$ the obligation of the service contract seller includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide.
- (E) **Whether** the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.
- (5) A step-by-step explanation of the procedure that the buyer should follow in order to obtain performance of any obligation under the service contract, including the following:
 - (A) **The** full legal and business name of the service contract seller.
 - (B) **The** mailing address of the service contract seller.
 - (C) *The* persons or class of persons that are authorized to perform service.
- (D) The name or title and address of any administrator, agent, employee, or department of the service contract seller that is responsible for the performance of any obligations.
 - (E) The method of giving notice to the service contract seller of the need for service;
- (F) Whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contract seller.
- (G) **If** the product must be transported to the service contract seller, either the place where the product may be delivered for service or repairs or a toll-free telephone number that the buyer may call to obtain that information;
 - (H) **All** other steps that the buyer must take to obtain service.
 - (I) **All** fees, charges, and other costs that the buyer must pay to obtain service.
- (6) An explanation of the steps that the service contract seller will take to carry out its obligations under the service contract.

- (7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.
- $\Bar{\ \ }$ (8) Information respecting the availability of any informal dispute settlement process.
- (9) A statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.

Nothing in this subdivision shall preclude a service contract seller from designating an administrator that a service contractholder may initially contact for performance of the obligations under the service contract.

- (d) Subdivisions (b) and (c) are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.
- (e) This section shall remain in effect only until **January 1, 2008**, and as of that date is repealed, unless a later enacted statute, that is enacted before **January 1, 2008**, deletes or extends that date.

(Amended Sec. 65, Ch. 405, Stats. 2002. Effective January 1, 2003.)

NOTE: The preceding section is repealed on January 1, 2008, and the following section becomes effective.

- **1794.4.** (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.
- (b) Except as otherwise expressly provided in the service contract, every service contract shall obligate the service contractor to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.
 - (c) The service contract shall contain all of the following items of information:
 - (1) A clear description and identification of the covered product.
- (2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.
- (3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.
- (4) A statement of the general obligation of the service contractor in the same language set forth in subdivision (b), with equally clear and conspicuous statements of the following:
- (A) Any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs, or remedies that are excluded from the scope of the service contract.
- (B) Any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls.
 - (C) Any additional services that the service contractor will provide.
- (D) Whether the obligation of the service contractor includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide.
- (E) Whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.
- (5) A step-by-step explanation of the procedure that the buyer should follow in order to obtain performance of any obligation under the service contract including *the following:*
 - (A) The full legal and business name of the service contractor.
 - (B) The mailing address of the service contractor.
 - (C) The persons or class of persons that are authorized to perform service.

- (D) The name or title and address of any agent, employee, or department of the service contractor that is responsible for the performance of any obligations.
 - (E) The method of giving notice to the service contractor of the need for service.
- (F) Whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contractor.
- (\hat{G}) If the product must be transported to the service contractor, either the place where the product may be delivered for service or repairs or a toll-free telephone number that the buyer may call to obtain that information.
 - (H) All other steps that the buyer must take to obtain service.
 - (I) All fees, charges, and other costs that the buyer must pay to obtain service.
- (6) An explanation of the steps that the service contractor will take to carry out its obligations under the service contract.
- (7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.
- (8) Information respecting the availability of any informal dispute settlement process.
- (d) Subdivisions (b) and (c) are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.
 - (e) This section shall become operative on *January 1, 2008*. (Amended Sec. 64, Ch. 405, Stats. 2002. Effective January 1, 2003.)
- **1794.41.** (a) No service contract covering any motor vehicle, home appliance or home electronic product purchased for use in this state may be offered for sale or sold unless all of the following elements exist:
- (1) The contract shall contain the disclosures specified in Section 1794.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.
- (2) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer. If a service contract for a home appliance or a home electronic product is sold by means of a telephone solicitation, the seller may elect to satisfy the requirements of this paragraph by mailing or delivering the contract to the buyer not later than 30 days after the date of the sale of the contract.
- (3) The contract is applicable only to items, costs, and time periods not covered by the express warranty. However, a service contract may run concurrently with or overlap an express warranty if (A) the contract covers items or costs not covered by the express warranty or (B) the contract provides relief to the purchaser not available under the express warranty, such as automatic replacement of a product where the express warranty only provides for repair.
- (4) The contract shall be cancelable by the purchaser under the following conditions:
- (A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract either within the first 60 days after receipt of the contract, or with respect to a used motor vehicle without manufacturer warranties, home appliance, or home electronic product, within the first 30 days after receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.
- (B) Unless the contract provides for a longer period for obtaining a full refund, after the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, after the first 30 days after the receipt of the contract, a pro rata

refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract. In addition, the seller may assess a cancellation or administrative fee, not to exceed 10 percent of the price of the service contract or twenty-five dollars (\$25), whichever is less.

(C) If the purchase of the service contract was financed, the seller may make the

refund payable to the purchaser, the assignee, or lender of record, or both.

- (b) Nothing in this section shall apply to a home protection plan that is issued by a home protection company which is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.
- (c) The amendments to this section made at the 1988 portion of the 1987-88 Regular Session of the Legislature that extend the application of this section to service contracts on home appliances and home electronic products shall become operative on July 1, 1989.

(Åmended Ch. 1183, Stats. 1990. Effective January 1, 1991.)

1794.5. The provisions of this chapter shall not preclude a manufacturer making express warranties from suggesting methods of effecting service and repair, in accordance with the terms and conditions of the express warranties, other than those required by this chapter.

(Added Ch. 1333, Stats. 1970.)

1795. If express warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such warranties shall be the same as that imposed on the manufacturer under this chapter.

(Added Ch. 1333, Stats. 1970.)

1795.1. This chapter shall apply to any equipment or mechanical, electrical, or thermal component of a system designed to heat, cool, or otherwise condition air, but, with that exception, shall not apply to the system as a whole where such a system becomes a fixed part of a structure.

(Amended Ch. 728, Stats. 1983. Effective January 1, 1984.)

- **1795.4.** For the purposes of this chapter only, the following rules apply to leases of both new and used consumer goods:
- (a) If express warranties are regularly furnished to purchasers of substantially the same kind of goods, (1) those warranties will be deemed to apply to the leased goods and (2) the lessor and lessee shall each be deemed to be the first purchaser of the goods for the purpose of any warranty provision limiting warranty benefits to the original purchaser.
- (b) The lessee of goods has the same rights under this chapter against the manufacturer and any person making express warranties that the lessee would have had under this chapter if the goods had been purchased by the lessee, and the manufacturer and any person making express warranties have the same duties and obligations under this chapter with respect to the goods that such manufacturer and other person would have had under this chapter if the goods had been sold to the lessee.
- (c) If a lessor leases goods to a lessee from the lessor's inventory, the lessee has the same rights under this chapter against the lessor that the lessee would have had if the goods had been purchased by the lessee, and the lessor has the same duties and obligations under this chapter with respect to the goods that the lessor would have had under this chapter if the goods had been sold to the lessee. For purposes of this section, "inventory" shall include both goods in the lessor's possession prior to negotiation of the lease and goods ordered from another party in order to lease those goods to the lessee where the lessor is a dealer in goods of that type.
- (d) If a lessor leases goods to a lessee which the lessor acquires other than from the lessor's inventory, the lessee has the same rights under this chapter against the seller of the goods to the lessor that the lessee would have had under this chapter if the goods had been purchased by the lessee from the seller, and the seller of the goods to the lessor has the same duties and obligations under this chapter with respect to the goods that the seller would have had under this chapter if the goods had been purchased by the lessee from the seller.
- (e) A lessor who re-leases goods to a new lessee and does not retake possession of the goods prior to consummation of the re-lease may, notwithstanding the provisions of Section 1793, disclaim as to that lessee any and all warranties created by this chapter by conspicuously disclosing in the lease that these warranties are disclaimed.
 - (f) A lessor who has obligations to the lessee with relation to warranties in

connection with a lease of goods and the seller of goods to a lessor have the same rights and remedies against the manufacturer and any person making express warranties that a seller of the goods would have had if the seller had sold the goods to the lessee.

(Added Ch. 1169, Stats. 1984. Effective January 1, 1985.)

- **1795.5.** Notwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean "new" goods, the obligation of a distributor or retail seller of used consumer goods in a sale in which an express warranty is given shall be the same as that imposed on manufacturers under this chapter except:
- (a) It shall be the obligation of the distributor or retail seller making express warranties with respect to used consumer goods (and not the original manufacturer, distributor, or retail seller making express warranties with respect to such goods when new) to maintain sufficient service and repair facilities within this state to carry out the terms of such express warranties.
- (b) The provisions of Section 1793.5 shall not apply to the sale of used consumer goods sold in this state.
- (c) The duration of the implied warranty of merchantability and where present the implied warranty of fitness with respect to used consumer goods sold in this state, where the sale is accompanied by an express warranty, shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable, but in no event shall such implied warranties have a duration of less than 30 days nor more than three months following the sale of used consumer goods to a retail buyer. Where no duration for an express warranty is stated with respect to such goods, or parts thereof, the duration of the implied warranties shall be the maximum period prescribed above.
- (d) The obligation of the distributor or retail seller who makes express warranties with respect to used goods that are sold in this state, shall extend to the sale of all such used goods, regardless of when such goods may have been manufactured.
 - (Amended Ch. 728, Stats. 1983. Effective January 1, 1984.)
- **1795.6.** (a) Every warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or Section 1793.22, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer's residence.
- (b) Notwithstanding the date or conditions set for the expiration of the warranty period, such warranty period shall not be deemed expired if either or both of the following situations occur: (1) after the buyer has satisfied the requirements of subdivision (a), the warranty repairs or service has not been performed due to delays caused by circumstances beyond the control of the buyer or (2) the warranty repairs or service performed upon the nonconforming goods did not remedy the nonconformity for which such repairs or service was performed and the buyer notified the manufacturer or seller of this failure within 60 days after the repairs or service was completed. When the warranty repairs or service has been performed so as to remedy the nonconformity, the warranty period shall expire in accordance with its terms, including any extension to the warranty period for warranty repairs or service.
- (c) For purposes of this section only, "manufacturer" includes the manufacturer's service or repair facility.
- (d) Every manufacturer or seller of consumer goods selling for fifty dollars (\$50) or more shall provide a receipt to the buyer showing the date of purchase. Every manufacturer or seller performing warranty repairs or service on the goods shall provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced or, where applicable, the date the goods were shipped or delivered to the buyer.

(Amended Čh. 1232, Stats. 1992. Effective January 1, 1993.)

1795.7. Whenever a warranty, express or implied, is tolled pursuant to Section 1795.6 as a result of repairs or service performed by any retail seller, the warranty shall be extended with regard to the liability of the manufacturer to a retail seller pursuant to law. In such event, the manufacturer shall be liable in accordance with the provisions of Section 1793.5 for the period that an express warranty has been extended by virtue of Section 1795.6 to every retail seller who incurs obligations in giving effect

to such express warranty. The manufacturer shall also be liable to every retail seller for the period that an implied warranty has been extended by virtue of Section 1795.6, in the same manner as he would be liable under Section 1793.5 for an express warranty. If a manufacturer provides for warranty repairs and service through its own service and repair facilities and through independent repair facilities in the state, its exclusive liability pursuant to this section shall be to such facilities.

(Added Ch. 844, Stats. 1974. Operative July 1, 1975.)

Motor Vehicle Warranty Adjustment Programs

- **1795.90.** For purposes of this chapter:
 (a) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, a lessee of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to that motor vehicle, and any person entitled by the terms of the warranty to enforce the obligations of the warranty.
- (b) "Manufacturer" means any person, firm, or corporation, whether resident or nonresident, that manufactures or assembles motor vehicles for sale or distribution in this state. In the case of motor vehicles not manufactured in the United States, the term "manufacturer" shall also include any person, firm, or corporation that is engaged in the business of importing motor vehicles.

(c) "Dealer" means any person, firm, or corporation selling or agreeing to sell in this state one or more new motor vehicles under a retail agreement with a manufacturer, manufacturer branch, distributor, distributor branch, or agent of any of them.

- (d) "Adjustment program" means any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided under a safety or emission-related recall campaign. "Adjustment program" does not include ad hoc adjustments made by a manufacturer on a case-by-case basis.
- (e) "Motor vehicle" means a motor vehicle, excluding motorcycles, motor homes, and off-road vehicles, which is registered in this state.
- (f) "Lessee" means any person who leases a motor vehicle pursuant to a written lease which provides that the lessee is responsible for repairs to the motor vehicle.
- (g) "Service bulletin" means any notice issued by a manufacturer and filed with the National Highway Traffic Safety Administration relating to vehicle durability, reliability, or performance.

1795.91. Dealers shall have the following duties:

(a) A dealer shall provide notice to prospective purchasers and lessees that provides information on how to get copies of service bulletins. Nothing in this notice shall be construed as an admission by the dealer or manufacturer of the existence or nonexistence of a vehicle defect.

The notice shall be deemed sufficient if posted in the showroom or other area conspicuous to motor vehicle purchasers and written in the following form:

FEDERAL LAW REQUIRES MANUFACTURERS TO FURNISH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (N.H.T.S.A.) BULLETINS DESCRIBING ANY DEFECTS IN THEIR VEHICLES.

YOU MAY OBTAIN COPIES OF THESE BULLETINS, FOR A FEE, FROM EITHER OF THE FOLLOWING:

THE MANUFACTURER (ASK YOUR DEALER FOR THE TOLL-FREE NUMBER)

N.H.T.S.A-TECHNICAL REFERENCE DIVISION 400 SEVENTH STREET, S.W. **ROOM 5110** WASHINGTON, D.C. 20590 202-366-2768

IN ADDITION. CERTAIN CONSUMER PUBLICATIONS PUBLISH THESE BULLETINS AND SOME COMPANIES WILL SEND THEM TO YOU, FOR A FEE.

(b) A dealer shall disclose to a consumer seeking repairs for a particular condition at its repair shop, the principal terms and conditions of the manufacturer's adjustment program covering the condition if the dealer has received a service bulletin concerning the adjustment program.

1795.92. Manufacturers shall have the following duties:

- (a) A manufacturer shall, within 90 days of the adoption of an adjustment program, subject to priority for safety or emission-related recalls, notify by first-class mail all owners or lessees of motor vehicles eligible under the program of the condition giving rise to and the principal terms and conditions of the program.
- (b) Copies of all notices mailed in accordance with subdivision (a) shall be sent to the New Motor Vehicle Board within the Department of Motor Vehicles and made available for public inquires.

(c) A manufacturer shall, within 30 days of the adoption of any new adjustment

program, notify its dealers, in writing, of all the terms and conditions thereof.

- (d) A manufacturer who establishes an adjustment program shall implement procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs expenses for repair of a condition subject to the program prior to acquiring knowledge of the program. The reimbursement shall be consistent with the terms and conditions of the particular program. The manufacturer shall notify the consumer within 21 business days of receiving a claim for reimbursement whether the claim will be allowed or denied. If the claim is denied, the specific reasons for the denial shall be stated in writing.
- (e) Any consumer who, prior to acquiring knowledge of an adjustment program, incurs expenses for repair of a condition subject to the adjustment program may file a claim for reimbursement under subdivision (d). The claim shall be made in writing to the manufacturer within two years of the date of the consumer's payment for repair of the condition.
- **1795.93.** Nothing in this chapter shall be construed to exclude, modify, or otherwise limit any other remedy provided by law to a consumer or lessee.

(Added Ch. 814, Stats. 1993. Effective January 1, 1994.)

Standards for Warranty Work

1796. Any individual, partnership, corporation, association, or other legal relationship which engages in the business of installing new or used consumer goods, has a duty to the buyer to install them in a good and workmanlike manner.

(Added Ch. 991, Stats. 1978. Effective January 1, 1979)

- **1796.5.** Any individual, partnership, corporation, association, or other legal relationship which engages in the business of providing service or repair to new or used consumer goods has a duty to the purchaser to perform those services in a good and workmanlike manner.
 - (Added Ch. 991, Stats. 1978. Effective January 1, 1979.)

Grev Market Goods

- 1797.8. (a) As used in this chapter, the term "grey market goods" means consumer goods bearing a trademark and normally accompanied by an express written warranty valid in the United States of America which are imported into the United States through channels other than the manufacturer's authorized United States distributor and which are not accompanied by the manufacturer's express written warranty valid in the United States.
- (b) As used in this chapter, the term "sale" includes a lease of more than four months.
- **1797.81.** (a) Every retail seller who offers grey market goods for sale shall post a conspicuous sign at the product's point of display and affix to the product or its package a conspicuous ticket, label, or tag disclosing any or all of the following, whichever is applicable:
- (1) The item is not covered by a manufacturer's express written warranty valid in the United States (however, any implied warranty provided by law still exists).
 - (2) The item is not compatible with United States electrical currents.
 - (3) The item is not compatible with United States broadcast frequencies.
- (4) Replacement parts are not available through the manufacturer's United States distributors.
- (5) Compatible accessories are not available through the manufacturer's United States distributors.
 - (6) The item is not accompanied by instructions in English.
 - (7) The item is not eligible for a manufacturer's rebate.
- (8) Any other incompatibility or nonconformity with relevant domestic standards known to the seller.

- (b) The disclosure described in paragraph (1) of subdivision (a) shall not be required to be made by a retail seller with respect to grey market goods that are accompanied by an express written warranty provided by the retail seller, provided that each of the following conditions is satisfied:
- (1) The protections and other benefits that are provided to the buyer by the express written warranty provided by the retail seller are equal to or better than the protections and other benefits that are provided to buyers in the United States of America by the manufacturer's express written warranty that normally accompanies the goods.
- (2) The express written warranty conforms to the requirements of the Song-Beverly Consumer Warranty Act, (Chapter 1 (commencing with Section 1790)), including, but not limited to, the warranty disclosure standards specified in Section 1793.1, and the standards applicable to service and repair facilities specified in Section 1793.2.
- (3) The retail seller has posted a conspicuous sign at the product's point of sale or display, or has affixed to the product or its package a conspicuous ticket, label, or tag that informs prospective buyers that copies of all of the warranties applicable to the products offered for sale by the retail seller are available to prospective buyers for inspection upon request.
- (4) The retail seller has complied with the provisions on presale availability of written warranties set forth in the regulations of the Federal Trade Commission adopted pursuant to the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (see 15 U.S.C.A. Sec. 2302(b)(1)(A) and 16 C.F.R. 702.1 et seq.).
- (c) Nothing in subdivision (b) shall affect the obligations of a retail seller to make the disclosures, if any, required by any other paragraph of subdivision (a).
- **1797.82.** Every retail dealer who offers for sale grey market goods shall be required to disclose in any advertisement of those goods the disclosures required by Section 1797.81. The disclosure shall be made in a type of conspicuous size.
- **1797.83.** In making the disclosures prescribed by this chapter, the retail seller may use reasonably equivalent language if necessary or appropriate to achieve a clearer, or more accurate, disclosure.
- **1797.84.** Nothing in this chapter shall be construed to authorize any sale of goods which is specifically prohibited by a federal or state statute or regulation or a local ordinance or regulation, or to relieve the seller of any responsibility for bringing the goods into compliance with any applicable federal or state statute or regulation or local ordinance or regulation.
- **1797.85.** Any retail seller who violates this chapter shall be liable to the buyer who returns the product for a refund, or credit on credit purchases, if the product purchased has not been used in a manner inconsistent with any printed instructions provided by the seller.
- **1797.86.** Any violation of this chapter constitutes unfair competition under Section 17200 of the Business and Professions Code, grounds for rescission under Section 1689 of this code, and an unfair method of competition or deceptive practice under Section 1770 of this code.

Specifications of Restrictions

- **1798.24.** No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:
 - (a) To the individual to whom the information pertains.
- (b) With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.
- (c) To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that such person is the authorized representative of the individual to whom the information pertains.
- (d) To those officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.
- (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is

compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

- (h) To a person who has provided the agency with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.
- (i) Pursuant to a determination by the agency which maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.
- (j) To the State Archives of the State of California as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.
- (k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(l) To any person pursuant to a search warrant.

- (m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.
- (n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.
- (o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.
- (p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing.
- (q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.
- (r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.
- (s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.
- (t) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the information and assurances that the personal identity of the subject shall not be further disclosed in individually identifiable form.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code. (Amended Sec. 1.1, Ch. 480, Stats. 1995. Effective October 2, 1995.)

Information Practices Act

1798.26. With respect to the sale of information concerning the registration of any vehicle or the sale of information from the files of drivers' licenses, the Department of Motor Vehicles shall, by regulation, establish administrative procedures under which any person making a request for information shall be required to identify himself or herself and state the reason for making the request. These procedures shall provide for the verification of the name and address of the person making a request for the information and the department may require the person to produce the information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. These procedures may provide for a 10-day delay in the release of the requested information. These procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

(Amended Ch. 1213, Stats. 1989. Effective January 1, 1990.)

1798.29. (a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed

to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

- (d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.
- (e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:
 - (1) Social security number.
 - (2) Driver's license number or California Identification Card number.
- (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.
- (f) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- (g) For purposes of this section, "notice" may be provided by one of the following methods:
 - (1) Written notice.
 - (2) Electronic notice, if the notice provided is consistent with the provisions

regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

- (3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:
- (A) E-mail notice when the agency has an e-mail address for the subject persons.
- (B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.
 - (C) Notification to major statewide media.
- (h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system. (Added Sec. 2. Ch. 1054. Stats. 2002. Effective January 1, 2003. Operative July

(Added Sec. 2, Ch. 1054, Stats. 2002. Effective January 1, 2003. Operative July 1, 2003.)

- 1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.
- (b) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

 (c) The notification required by this section may be delayed if a law
- (c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.
- (d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.
- (e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:
 - (1) Social security number.
 - (2) Driver's license number or California Identification Card number.
- (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.
- (f) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- (g) For purposes of this section, "notice" may be provided by one of the following methods:
 - (1) Written notice.
 - (2) Electronic notice, if the notice provided is consistent with the provisions

regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

- (3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:
- (A) E-mail notice when the person or business has an e-mail address for the subject persons.
- (B) Conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one.
 - (C) Notification to major statewide media.
- (h) Notwithstanding subdivision (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part, shall be deemed to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(Added Sec. 4, Ch. 1054, Stats. 2002. Effective January 1, 2003. Operative July 1, 2003.)

TITLE 1.81.3. IDENTITY THEFT

1798.92. For the purposes of this title:

- (a) "Claimant" means a person who has or purports to have a claim for money or an interest in property in connection with a transaction procured through identity theft.
- (b) "Identity theft" means the unauthorized use of another person's personal
- identifying information to obtain credit, goods, services, money, or property.

 (c) "Personal identifying information" means a person's name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number.
- (d) "Victim of identity theft" means a person who had his or her personal identifying information used without authorization by another to obtain credit, goods, services, money, or property, and did not use or possess the credit, goods, services, money, or property obtained by the identity theft, and filed a police report in this regard pursuant to Section 530.5 of the Penal Code.

(Added Sec. 21, Ch. 354, Stats. 2001. Effective January 1, 2002.)

Motor Vehicle Sales and Finance Act

- **2981.** As used in this chapter, unless the context otherwise requires:
- (a) "Conditional sale contract" means:
- (1) Any contract for the sale of a motor vehicle between a buyer and a seller, with or without accessories, under which possession is delivered to the buyer and either (A) the title vests in the buyer thereafter only upon the payment of all or a part of the price, or the performance of any other condition, or (B) a lien on the property is to vest in the seller as security for the payment of part or all of the price, or for the performance of any other condition, or
- (2) Any contract for the bailment of a motor vehicle between a buyer and a seller, with or without accessories, by which the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the vehicle and its accessories, if any, at the time the contract is executed, and by which it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option of becoming, the owner of the vehicle upon full compliance with the terms of the contract.
- (b) "Seller" means a person engaged in the business of selling or leasing motor vehicles under conditional sale contracts.
- (c) "Buyer" means the person who buys or hires a motor vehicle under a conditional sale contract.
- (d) "Person" includes an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.
- (e) "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale

and the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, and payment of a prior credit or lease balance remaining on property being traded in.

- (f) "Downpayment" means any payment which the buyer pays or agrees to pay to the seller in cash or property value or money's worth at or prior to delivery by the seller to the buyer of the motor vehicle described in the conditional sale contract. The term shall also include the amount of any portion of the downpayment the payment of which is deferred until not later than the due date of the second otherwise scheduled payment, if the amount of the deferred downpayment is not subject to a finance charge. The term does not include any administrative finance charge charged, received or collected by the seller as provided in this chapter.
- (g) "Amount financed" means the amount required to be disclosed pursuant to paragraph (8) of subdivision (a) of Section 2982.
- (h) "Unpaid balance" means the difference between (e) and (f), plus all insurance premiums (except for credit life or disability insurance when the amount thereof is included in the finance charge), which are included in the contract balance, and the total amount paid or to be paid (1) to any public officer in connection with the transaction, and (2) for license, certificate of title, and registration fees imposed by law, and the amount of the state fee for issuance of a certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code.
- (i) "Finance charge" has the meaning set forth for that term in Section 226.4 of Regulation Z. The term shall not include delinquency charges or collection costs and fees as provided by subdivision (k) of Section 2982, extension or deferral agreement charges as provided by Section 2982.3, or amounts for insurance, repairs to or preservation of the motor vehicle, or preservation of the security interest therein advanced by the holder under the terms of the contract.
- (j) "Total of payments" means the amount required to be disclosed pursuant to subdivision (h) of Section 226.18 of Regulation Z. The term includes any portion of the downpayment which is deferred until not later than the second otherwise scheduled payment and which is not subject to a finance charge. The term shall not include amounts for which the buyer may later become obligated under the terms of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise.
- (k) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code which is bought for use primarily for personal or family purposes, and does not mean any vehicle which is bought for use primarily for business or commercial purposes or a mobilehome, as defined in Section 18008 of the Health and Safety Code which is sold on or after July 1, 1981. "Motor vehicle" does not include any trailer which is sold in conjunction with a vessel and which comes within the definition "of "goods" under Section 1802.1.
- (1) "Purchase order" means a sales order, car reservation, statement of transaction or any other such instrument used in the conditional sale of a motor vehicle pending execution of a conditional sale contract. The purchase order shall conform to the disclosure requirements of subdivision (a) of Section 2982 and Section 2984.1 and the provisions of subdivision (m) of Section 2982 shall be applicable thereto.
- (m) "Regulation Z" means any rule, regulation or interpretation promulgated by the Board of Governors of the Federal Reserve System ("Board") under the federal Truth in Lending Act, as amended (15 U.S.C. 1601, et seq.), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue such interpretations or approvals.
- (n) "Simple-interest basis" means the determination of a finance charge, other than an administrative finance charge, by applying a constant rate to the unpaid balance as it changes from time to time either:
- (1) Calculated on the basis of a 365-day year and actual days elapsed (although the seller may, but need not, adjust its calculations to account for leap years); reference in this chapter to the "365-day basis" shall mean this method of determining the finance charge, or
- (2) For contracts entered into prior to January 1, 1988, calculated on the basis of a 360-day year consisting of 12 months of 30 days each and on the assumption that all payments will be received by the seller on their respective due dates; reference in this chapter to the "360-day basis" shall mean this method of determining the finance charge.
 - (o) "Precomputed basis" means the determination of a finance charge by

multiplying the original unpaid balance of the contract by a rate and multiplying that product by the number of payment periods elapsing between the date of the contract and the date of the last scheduled payment.

(p) "Service contract" means a contract in writing to perform, over a fixed period of

(p) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair, or both, of the motor vehicle described in the conditional sale contract.

(Amended Sec. 1, Ch. 212, Stats. 1999. Effective January 1, 2000.)

2981.5. A contract for the bailment or leasing of a motor vehicle, with or without accessories, which establishes the maximum for which a bailee or lessee could be held liable at the end of the lease or bailment period, or upon an earlier termination, by reference to the value of the vehicle at such time, is not a contract by which the bailee or lessee will become or for no other or for a nominal consideration has the option of becoming the owner of the vehicle, for the purposes of paragraph (2) of subdivision (a) of Section 2981 or any other provision of this chapter.

(Added Ch. 696, Stats. 1973. Effective January 1, 1974.)

2981.7. All contracts entered into between a buyer and a seller on or after January 1, 1983, shall provide for the calculation of the finance charge contemplated by item (A) of paragraph (1) of subdivision (c) of Section 2982 on the simple- interest basis, if the date on which the final installment is due, according to the original terms of the contract, is more than 62 months after the date of the contract.

(Added Ch. 805, Stats. 1979. Effective January 1, 1980.)

2981.8. No contract shall provide for a finance charge which is determined in part by the precomputed basis and in part by the simple-interest basis except for any finance charge permitted by subdivisions (a) and (c) of Section 2982.8.

(Amended Ch. 1380, Stats. 1980. Effective October 1, 1980. Supersedes Ch. 1149.)

2981.9. Every conditional sale contract subject to this chapter shall be in writing and, if printed, shall be printed in type no smaller than 6-point, and shall contain in a single document all of the agreements of the buyer and seller with respect to the total cost and the terms of payment for the motor vehicle, including any promissory notes or any other evidences of indebtedness. The conditional sale contract or a purchase order shall be signed by the buyer or his or her authorized representative and by the seller or its authorized representative. An exact copy of the contract or purchase order shall be furnished to the buyer by the seller at the time the buyer and the seller have signed it. No motor vehicle shall be delivered pursuant to a contract subject to this chapter until the seller delivers to the buyer a fully executed copy of the conditional sale contract or purchase order and any vehicle purchase proposal and any credit statement which the seller has required or requested the buyer to sign and which he or she has signed during the contract negotiations. The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed.

(Added Ch. 1075, Stats. 1981. Operative April 1, 1982.)

- **2982.** Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.
- (a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":
- (1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, and the amount charged for a service contract.
 - (B) The fee to be retained by the seller for document preparation.
- (C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.
 - (D) Taxes imposed on the sale.
 - (E) The amount charged for a service contract.
- (F) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled "prior credit or lease balance (see downpayment and trade-in calculation)."

(G) The total cash price, which is the sum of subparagraphs (A) to (F), inclusive.

(2) Amounts paid to public officials for the following:

(A) Vehicle license fees.

(B) Registration, transfer, and titling fees.

- (C) California tire fees imposed pursuant to Section 42885 of the Public Resources Code.
- (3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.
- (4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.
 - (5) A subtotal representing the sum of the foregoing items.
 - (6) The amount of the buyer's downpayment itemized to show the following:

(A) The agreed value of the property being traded in.

(B) The prior credit or lease balance, if any, owing on the property being traded in.

(C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.

(D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.

(E) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(F) The remaining amount paid or to be paid by the buyer as a downpayment.

- (G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment and no amount shall be stated as the prior credit or lease balance under subparagraph (F) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (F) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled "total downpayment" and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (F) of paragraph (1).
- (7) The amount of any administrative finance charge, labeled "prepaid finance charge."
- (8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."
- (b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.
- (c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.
- (d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.
- (e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.
- (f) (1) Where the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.
- (2) Where the contract includes a finance charge which is determined on the simpleinterest basis but provides for a minimum finance charge in the event of prepayment

in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) Where the contract includes a finance charge which is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) Where the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness

evidenced by this agreement.'

(3) Where the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature"

- (i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.
- (2) If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.
- (j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge shall not exceed the greater of:
 - (A) (i) One and one-half percent on so much of the unpaid balance as does not

exceed two hundred twenty-five dollars (S225), $1^{1}/_{6}$ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (S225) as does not exceed nine hundred dollars (S900) and $^{5}/_{6}$ of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (S900) as does not exceed two thousand five hundred dollars (S2,500); or

- (ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or
- (B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25); or
- (C) If the finance charge or a portion thereof is determined by the simple-interest basis:
- (i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000).
- (ii) Fifty dollars (\$50) if the unpaid balance exceeds one thousand dollars (\$1,000) but does not exceed two thousand dollars (\$2,000).
- (iii)Seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).
- (2) The holder of the contract shall not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.
- (3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars (\$5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars (\$75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.
- (4) When a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.
- (k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement shall not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.
- (*I*) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:
- (1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. Where the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any

refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

- (2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.
- (3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.
- (4) The provisions of this subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.
- (5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2); provided further that the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.
- (m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. Nothing in this chapter prohibits the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.
- (n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.
- (o) No seller may impose an application fee for a transaction governed by this chapter.
- (p) The seller or holder may charge and collect a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.
- (q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.
- (r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING OFF PERIOD

CALIFORNIA LAW DOES NOT PROVIDE FOR A "COOLING OFF" OR OTHER CANCELLATION PERIOD FOR VEHICLE SALES. THEREFORE, YOU CANNOT LATER CANCEL THIS CONTRACT SIMPLY BECAUSE YOU CHANGE YOUR MIND, DECIDE THE VEHICLE COSTS TOO MUCH, OR WISH YOU HAD ACQUIRED A DIFFERENT VEHICLE. AFTER YOU SIGN BELOW, YOU MAY ONLY CANCEL THIS CONTRACT WITH THE AGREEMENT OF THE SELLER OR FOR LEGAL CAUSE, SUCH AS FRAUD.

2982.1. It shall be unlawful for any seller to induce or attempt to induce any person to enter into a contract subject to this chapter by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the buyer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of, the same or related goods.

(Added Ch. 452, Stats. 1968. Effective November 13, 1968.)

2982.3. (a) The holder of a conditional sale contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless the agreement for such extension or deferment is in writing and signed by the parties thereto. However, the seller or holder may, as an adjunct to or to assist in efforts to collect one or more delinquent installments on the contract, advise one or more obligors on the contract, either in writing or orally, that the due date for one or more installments under the contract shall be extended, with no charge being made for such extension other than any applicable late charge provided for in the contract.

(b) Where the contract includes a finance charge determined on the precomputed basis, the holder may charge and contract for the payment of an extension or deferral agreement charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1 percent per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar (\$1) for the period of extension or deferral may be made in any case where the extension or deferral agreement charge, when computed at such rate, amounts to less than one dollar (\$1).

(c) Where the contract includes a finance charge determined on the simple-interest basis, the holder may charge and contract for the payment of an extension or deferral agreement charge by the buyer and collect and receive the same, but the charge for the extension or deferral agreement may not exceed the lesser of twenty-five dollars (\$25) or 10 percent of the then outstanding principal balance of the contract. Such charge shall be in addition to any finance charges which accrue because such extended or deferred payments are received at a time other than as originally scheduled.

(Amended Ch. 448, Stats. 1987. Effective January 1, 1988.)

- **2982.5.** (a) Nothing contained in this chapter shall be deemed to affect a loan, or the security therefor, between a purchaser of a motor vehicle and a supervised financial organization, other than the seller of the motor vehicle, all or a portion of which loan is used in connection with the purchase of a motor vehicle. As used herein "supervised financial organization" means a person organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans and subject to supervision by an official or agency of this state or the United States.
- (b) Nothing in this chapter shall be deemed to prohibit the seller's assisting the buyer in obtaining a loan upon any security from any third party to be used as a part or all of the downpayment or any other payment on a conditional sale contract or purchase order; provided that the conditional sale contract sets forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security must be mutually agreed to by the buyer and the lender and notice to the buyer in at least eight-point type that he or she is obligated for the installment payments on both the conditional sale contract and the loan. The seller shall not provide any security or other guarantee of payment on the loan, nor shall the seller receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer obligates himself to purchase, or receives possession of, the motor vehicle prior to securing the loan, and if the buyer upon appropriate application for the loan is unable to secure the loan, on the conditions stated in the conditional sale contract, the conditional sale contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.
- (c) The proceeds of any such loan payable to the seller after the date of the contract but prior to the due date of the second payment otherwise scheduled thereunder shall not be subject to a finance charge and the amount thereof shall be disclosed pursuant

to subparagraph (B) of paragraph (6) of subdivision (a) of Section 2982.

- (d) Nothing in this chapter shall be deemed to prohibit the seller's assisting the buyer in obtaining a loan from any third party to be used to pay for the full purchase price, or any part thereof, of a motor vehicle provided that each of the following provisions shall apply:
- (1) The loan may be upon any security, but except as provided in paragraph (2), the loan shall not be secured in whole or in part by a lien on real property. Any lien on real property taken in violation of this section shall be void and unenforceable.
- (2) A lien on real property may be taken to secure a loan of seven thousand five hundred dollars (\$7,500) or more used to pay the full purchase price, or any part thereof, of a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, which is not less than 20 feet in length.
- (3) The provisions of Sections 2983.2, 2983.3, and 2984.4 shall apply to the loan, but shall not authorize the lender or the lender's successor in interest to charge for any costs, fees, or expenses or to obtain any other benefit which the lender is prohibited from charging or obtaining under any regulatory law applicable to the lender. Notwithstanding this paragraph, the provisions of Sections 2983.2 and 2983.3 shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.
- (4) The lender or the lender's successor in interest shall be subject to all claims and defenses which the buyer could assert against the seller, but liability may not exceed the amount of the loan.
- (5) If the buyer becomes obligated to purchase, or receives possession of, the motor vehicle prior to obtaining the loan, the agreement between the buyer and the seller shall set forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security must be mutually agreed to by the buyer and the lender, and notice to the buyer in at least eight-point type that the buyer is obligated for the installment payments on the loan and for any payments which may be due on the agreement between the buyer and the seller. The seller shall not provide any security or other guarantee of payment on the loan, and the seller shall not receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer upon proper application for the loan is unable to obtain the loan, on the condition stated in the agreement between the buyer and the seller, the agreement shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.
- (6) Any waiver by the buyer of the provisions of this section shall be void and unenforceable. This subdivision shall not apply to state or federally chartered banks and savings and loan associations and shall not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.

(Amended Ch. 226, Stats. 1985.)

- **2982.7.** (a) Any payment made by a buyer to a seller pending execution of a conditional sale contract shall be refunded to the buyer in the event the conditional sale contract is not executed.
- (b) In the event of breach by the seller of a conditional sale contract or purchase order where the buyer leaves his motor vehicle with the seller as downpayment and such motor vehicle is not returned by the seller to the buyer for whatever reason, the buyer may recover from the seller either the fair market value of the motor vehicle left as a downpayment or its value as stated in the contract or purchase order, whichever is greater. The recovery shall be tendered to the buyer within five business days after the breach.
- (c) The remedies of the buyer provided for in subdivision (b) are nonexclusive and cumulative and shall not preclude the buyer from pursuing any other remedy which he may have under any other provision of law.

(Amended Ch. 1285, Stats. 1976. Effective January 1, 1977.)

- **2982.8.** (a) If a buyer is obligated under the terms of the conditional sale contract to maintain insurance on the vehicle and subsequent to the execution of the contract the buyer either fails to maintain or requests the holder to procure the insurance, any amounts advanced by the holder to procure the insurance may be the subject of finance charges from the date of advance as provided in subdivision (e).
- (b) These amounts shall be secured as provided in the contract and permitted by Section 2984.2 if the holder notifies the buyer in writing of his or her option to repay

those amounts in any one of the following ways:

(1) Full payment within 10 days from the date of giving or mailing the notice.

(2) Full amortization during the term of the insurance.

- (3) If offered by the holder, full amortization after the term of the conditional sale contract, to be payable in installments which do not exceed the average payment allocable to a monthly period under the contract.
- (4) If offered by the holder, a combination of the methods described in paragraphs (2) and (3), so that there is some amortization during the term of the insurance, with the remainder of the amortization being accomplished after the term of the conditional sale contract, to be payable in installments which do not exceed the average payment allocable to a monthly period under the original terms of the contract.

(5) If offered by the holder, any other amortization plan.

If the buyer neither pays in full the amounts advanced nor notifies the holder in writing of his or her choice regarding amortization options before the expiration of 10 days from the date of giving or mailing the notice by the holder, the holder may amortize the amounts advanced on a secured basis pursuant to paragraph (2) or, if offered by the holder as an option to the buyer, paragraph (3) or (4).

(c) The written notification described in subdivision (b) shall also set forth the amounts advanced by the holder and, with respect to each amortization plan the amount of the additional finance charge, the sum of the amounts advanced and the additional finance charge, the number of installments required, the amount of each installment and the date for payment of the installments.

In addition, the notice shall contain a statement in contrasting red print in at least type, winc.
TV UNDER "WARNING-IT 8-point bold reads as follows: IS YOUR LAW **CALIFORNIA** RĖSPONSIBILITY TO OBTAIN LIABILITY INSURANCE OR BE SUBJECT TO PENALTIES FOR VIOLATING SECTION 16020 OF THE VEHICLE CODE, WHICH MAY INCLUDE LOSS OF LICENSE OR A FINE. THE INSURANCE ACQUIRED BY THE LIENHOLDER DOES NOT PROVIDE LIABILITY COVERAGE AND DOES NOT SATISFY YOUR RESPONSIBILITY UNDER CALIFORNIA LAW.'

- (d) If subsequent to the execution of the contract the holder advances amounts for repairs to or preservation of the motor vehicle or preservation of the holder's security interest therein and such advances are occasioned by the buyer's default under the contract, such advances may be the subject of finance charges from the date of advance as provided in subdivision (e) and shall be secured as provided in the contract and permitted by Section 2984.2.
- (e) The maximum rate of finance charge which may be imposed on amounts advanced by the holder subsequent to the execution of the contract for insurance, repairs to or preservation of the motor vehicle, or preservation of the holder's security interest therein, shall not exceed the annual percentage rate disclosed pursuant to Section 2982.

(Amended Ch. 1092, Stats. 1988. Effective January 1, 1989.)

In the event a buyer obligates himself to purchase, or receive possession of, a motor vehicle pursuant to a contract or purchase order, and the seller knows that the buyer intends to obtain financing from a third party without the assistance of the seller, and the buyer is unable to obtain such financing, the contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand. (Added Ch. 1285, Stats. 1976. Effective January 1, 1977.)

If the seller, except as the result of an accidental or bona fide error in computation, violates any provision of Section 2981.9 or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable, except by a bona fide purchaser, assignee or pledgee for value or until after the violation is corrected as provided in Section 2984, and if the violation is not corrected the buyer may recover from the seller the total amount paid, pursuant to the terms of the contract, by the buyer to the seller or his assignee. The amount recoverable for property traded in as all or part of the downpayment shall be equal to the agreed cash value of such property as the value appears on the conditional sale contract or the fair market value of such property as of the time the contract is made, whichever is greater.

(Amended Ch. 1075, Stats. 1981. Operative April 1, 1982.)

If the seller or holder of a conditional sale contract, except as the result of an accidental or bona fide error of computation, violates any provision of subdivision (l) of Section 2982, the buyer may recover from such person three times the amount of any finance charge paid to that person.

If a holder acquires a conditional sale contract without actual knowledge of the violation by the seller of Section 2981.9 or of subdivision (a), (j), or (k) of Section 2982, the contract shall be valid and enforceable by such holder except (unless the violation is corrected as provided in Section 2984) the buyer is excused from payment of the unpaid finance charge.

If a holder acquires a conditional sale contract with knowledge of such violation of Section 2981.9 or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable except by a bona fide purchaser, assignee or pledgee for value or unless the violation is corrected as provided in Section 2984, and if the violation is not corrected the buyer may recover from the person to whom payment was made the amounts specified in Section 2983.

When a conditional sale contract is not enforceable under Section 2983 or 2983.1, the buyer may elect to retain the motor vehicle and continue the contract in force or may, with reasonable diligence, elect to rescind the contract and return the motor vehicle. The value of the motor vehicle so returned shall be credited as restitution by the buyer without any decrease which results from the passage of time in the cash price of the motor vehicle as such price appears on the conditional sale contract.

(Amended Ch. 1075, Stats. 1981. Operative April 1, 1982.)

- **2983.2.** (a) Except where the motor vehicle has been seized as described in paragraph (6) of subdivision (b) of Section 2983.3, any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the contract. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the persons liable on the contract. If those persons are married to each other, and, according to the most recent records of the seller or holder of the contract, reside at the same address, one notice addressed to both persons at that address is sufficient. Except as otherwise provided in Section 2983.8, those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following:
- (1) Sets forth that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the contract until the expiration of 15 days from the date of giving or mailing the notice and provides an itemization of the contract balance and of any delinquency, collection or repossession costs and fees and sets forth the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date of the notice.
- (2) States either that there is a conditional right to reinstate the contract until the expiration of 15 days from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no right of reinstatement and provides a statement of reasons therefor.
- (3) States that, upon written request, the seller or holder shall extend for an additional 10 days the redemption period or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. The seller or holder shall provide the proper form for applying for the extensions with the substance of the form being limited to the extension request, spaces for the requesting party to sign and date the form, and instructions that it must be personally served or sent by certified or registered mail, return receipt requested, to a person or office and address designated by the seller or holder and received before the expiration of the initial redemption and reinstatement periods.
- (4) Discloses the place at which the motor vehicle will be returned to those persons upon redemption or reinstatement.
- (5) Designates the name and address of the person or office to whom payment shall be made.
- (6) States the seller's or holder's intent to dispose of the motor vehicle upon the expiration of 15 days from the date of giving or mailing the notice, or if by mail and either the place of deposit in the mail or the place of address is outside of this state, the period shall be 20 days instead of 15 days, and further, that upon written request to extend the redemption period and any applicable reinstatement period for 10 days, the seller or holder shall without further notice extend the period accordingly.
- (7) Informs those persons that upon written request, the seller or holder will furnish a written accounting regarding the disposition of the motor vehicle as provided for in subdivision (b). The seller or holder shall advise them that this request must be

personally served or sent first-class mail, postage prepaid, or certified mail, return receipt requested, to a person or office and address designated by the seller or holder.

- (8) Includes notice, in at least 10-point bold type if the notice is printed, reading as follows: "NOTICE. YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE."
- (9) Informs those persons that upon the disposition of the motor vehicle, they will be liable for the deficiency balance plus interest at the contract rate, or at the legal rate of interest pursuant to Section 3289 if there is no contract rate of interest, from the date of disposition of the motor vehicle to the date of entry of judgment.

The notice prescribed by this section shall not affect the discretion of the court to strike out an unconscionable interest rate in the contract for which the notice is required, nor affect the court in its determination of whether the rate is unconscionable.

- (b) Unless automatically provided to the buyer within 45 days after the disposition of the motor vehicle, the seller or holder shall provide to any person liable on the contract within 45 days after their written request, if the request is made within one year after the disposition, a written accounting regarding the disposition. The accounting shall itemize:
 - (1) The gross proceeds of the disposition.
- (2) The reasonable and necessary expenses incurred for retaking, holding, preparing for and conducting the sale and to the extent provided for in the agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the seller or holder in retaking the motor vehicle from any person not a party to the contract.
- (3) The satisfaction of indebtedness secured by any subordinate lien or encumbrance on the motor vehicle if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the seller or holder, the holder of a subordinate lien or encumbrance must seasonably furnish reasonable proof of its interest, and unless it does so, the seller or holder need not comply with its demand.
- (c) In all sales which result in a surplus, the seller or holder shall furnish an accounting as provided in subdivision (b) whether or not requested by the buyer. Any surplus shall be returned to the buyer within 45 days after the sale is conducted.
- (d) This section shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.
 - (Amended Ch. 1, Sec. 313, Stats. 1996. Effective January 1, 1997.)
- **2983.3.** (a) In the absence of default in the performance of any of the buyer's obligations under the contract, the seller or holder may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.
- (b) If after default by the buyer, the seller or holder repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the contract shall have a right to reinstate the contract and the seller or holder shall not accelerate the maturity of any part or all of the contract prior to expiration of the right to reinstate, unless the seller or holder reasonably and in good faith determines that any of the following has occurred:
- (1) The buyer or any other person liable on the contract by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.
- (2) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, in order to avoid repossession has concealed the motor vehicle or removed it from the state.
- (3) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has become substantially impaired in value, or the buyer, any other person liable on the contract, or any nonoccasional permissive user in possession of the motor vehicle has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle may become substantially impaired in value.
- (4) The buyer or any other person liable on the contract has committed, attempted to commit, or threatened to commit criminal acts of violence or bodily harm against an agent, employee, or officer of the seller or holder in connection with the seller's or holder's repossession of or attempt to repossess the motor vehicle.

- (5) The buyer has knowingly used the motor vehicle, or has knowingly permitted it to be used, in connection with the commission of a criminal offense, other than an infraction, as a consequence of which the motor vehicle has been seized by a federal, state, or local agency or authority pursuant to federal, state, or local law.
- (6) The motor vehicle has been seized by a federal, state, or local public agency or authority pursuant to (A) Section 1324 of Title 8 of the United States Code or Part 274 of Title 8 of the Code of Federal Regulations, (B) Section 881 of Title 21 of the United States Code or Part 9 of Title 28 of the Code of Federal Regulations, or (C) other federal, state, or local law, including regulations, and, pursuant to that other law, the seizing authority, as a precondition to the return of the motor vehicle to the seller or holder, prohibits the return of the motor vehicle to the buyer or other person liable on the contract or any third person claiming the motor vehicle by or through them or otherwise effects or requires the termination of the property rights in the motor vehicle of the buyer or other person liable on the contract or claimants by or through them.
- (c) Exercise of the right to reinstate the contract shall be limited to once in any 12-month period and twice during the term of the contract.
- (d) The provisions of this subdivision cover the method by which a contract shall be reinstated with respect to curing events of default which were a ground for repossession or occurred subsequent to repossession:
- (1) Where the default is the result of the buyer's failure to make any payment due under the contract, the buyer or any other person liable on the contract shall make the defaulted payments and pay any applicable delinquency charges.
- (2) Where the default is the result of the buyer's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the buyer or any other person liable on the contract shall either satisfy all encumbrances and liens or, in the event the seller or holder satisfies the encumbrances and liens, the buyer or any other person liable on the contract shall reimburse the seller or holder for all reasonable costs and expenses incurred therefor.
- (3) Where the default is the result of the buyer's failure to keep and maintain insurance on the motor vehicle, the buyer or any other person liable on the contract shall either obtain the insurance or, in the event the seller or holder has obtained the insurance, the buyer or any other person liable on the contract shall reimburse the seller or holder for premiums paid and all reasonable costs and expenses, including, but not limited to, any finance charge in connection with the premiums permitted by Section 2982.8, incurred therefor.
- (4) Where the default is the result of the buyer's failure to perform any other obligation under the contract, unless the seller or holder has made a good faith determination that the default is so substantial as to be incurable, the buyer or any other person liable on the contract shall either cure the default or, if the seller or holder has performed the obligation, reimburse the seller or holder for all reasonable costs and expenses incurred in connection therewith.
- (5) Additionally, the buyer or any other person liable on the contract shall, in all cases, reimburse the seller or holder for all reasonable and necessary collection and repossession costs and fees incurred, including attorney's fees and legal expenses expended in retaking and holding the vehicle.
- (e) If the seller or holder denies the right to reinstatement under subdivision (b) or paragraph (4) of subdivision (d), the seller or holder shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the seller or holder fails to sustain the burden of proof, the seller or holder shall not be entitled to a deficiency, but it shall not be presumed that the buyer is entitled to damages by reason of the failure of the seller or holder to sustain the burden of proof.
- (f) This section shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.
 - (Amended Ch. 448, Stats. 1987. Effective January 1, 1988.)
- **2983.4.** Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a contract or purchase order subject to the provisions of this chapter regardless of whether the action is instituted by the seller, holder or buyer. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

(Amended Ch. 1285, Stats. 1976. Effective January 1, 1977.)

2983.5. An assignee of the seller's rights is subject to all equities and defenses of

the buyer against the seller, notwithstanding an agreement to the contrary, but the assignee's liability may not exceed the amount of the debt owing to the assignee at the time of the assignment.

(b) The assignee shall have recourse against the seller to the extent of any liability incurred by the assignee pursuant to this section regardless of whether the assignment was with or without recourse.

(Amended Ch. 66, Stats. 1975. Effective January 1, 1976.)

Any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor.

(Added Ch. 1338, Stats. 1968. Effective November 13, 1968.)

2983.7. No conditional sale contract shall contain any provision by which:

(a) The buyer agrees not to assert against the seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense.

(b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given; provided, that nothing herein contained shall prohibit the giving of an assignment of wages contained in a separate instrument pursuant to Section 300 of the Labor Code.

(c) The buyer waives any right of action against the seller or holder of the contract or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle.

(d) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in the collection of

payments under the contract or in the repossession of the motor vehicle.

(e) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instruments executed in connection therewith.

(f) The seller or holder of the contract is given the right to commence action on a contract under the provisions of this chapter in a county other than the county in which the contract was in fact signed by the buyer, the county in which the buyer resides at the commencement of the action, the county in which the buyer resided at the time the contract was entered into, or in the county in which the motor vehicle purchased pursuant to such contract is permanently garaged.

(Added Ch. 1288, Stats. 1968. Effective November 13, 1968.)

- 2983.35. (a) If a creditor has requested a cosigner as a condition of granting credit to any person for the purpose of acquisition of a motor vehicle, the creditor or holder shall give the cosigner a written notice of delinquency prior to the repossession of the motor vehicle if the motor vehicle is to be repossessed pursuant to the motor vehicle credit agreement. The written notice of delinquency shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the cosigner. If the last known address of the buyer and the cosigner are the same, a single written notice of delinquency given to both the borrower and cosigner prior to repossession satisfies the cosigner notice requirement of this section.
- (b) A creditor or holder who fails to comply with this section may not recover any costs associated with the repossession of the vehicle from the cosigner.
- (c) This section applies to any motor vehicle credit agreement, notwithstanding Section 2982.5.
- (d) The following definitions govern the construction of this section.
 (1) "Cosigner" means a buyer who executes a motor vehicle credit agreement but does not in fact receive possession of the motor vehicle that is the subject of the agreement.
 - (2) "Creditor" means a seller or lender described in paragraph (4).
- (3) "Holder" means any other person who is entitled to enforce the motor vehicle credit agreement.
- (4) "Motor vehicle credit agreement" means any conditional sales contract as defined in Section 2981 and any contract or agreement in which a lender gives value to enable a purchaser to acquire a motor vehicle and in which the lender obtains a security interest in the motor vehicle.

(Added Sec. 2, Ch. 313, Stats. 1996. Effective January 1, 1997.)

Any failure to comply with any provision of this chapter (commencing with Section 2981) may be corrected by the holder, provided, however, that a wilful violation may not be corrected unless it is a violation appearing on the face of the contract and is corrected within 30 days of the execution of the contract or within 20 days of its sale, assignment or pledge, whichever is later, provided that the 20-day period shall commence with the initial sale, assignment or pledge of the contract, and provided that any other violation appearing on the face of the contract may be corrected only within such time periods. A correction which will increase the amount of the contract balance or the amount of any installment as such amounts appear on the conditional sale contract shall not be effective unless the buyer concurs in writing to the correction. If notified in writing by the buyer of such a failure to comply with any provision of this chapter, the correction shall be made within 10 days of notice. Where any provision of a conditional sale contract fails to comply with any provision of this chapter, the correction shall be made by mailing or delivering a corrected copy of the contract to the buyer. Any amount improperly collected by the holder from the buyer shall be credited against the indebtedness evidenced by the contract or returned to the buyer. A violation corrected as provided in this section shall not be the basis of any recovery by the buyer or affect the enforceability of the contract by the holder and shall not be deemed to be a substantive change in the agreement of the parties.

(Amended Ch. 838, Stats. 1963.)

2984.1. Every conditional sale contract shall contain a statement in contrasting red print in at least 8-point bold type which shall satisfy the requirements of Section 5604 of the Vehicle Code and be signed or initialed by the buyer, as follows: THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING: YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE PURCHASED. YOU DO NOT HAVE FULL COVERAGE, BEING $^{\mathrm{IF}}$ SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

No person shall print for use as a sales contract form, any form which does not comply with this section.

(Amended Ch. 177, Stats. 1988. Effective January 1, 1989.)

- **2984.2.** (a) No conditional sale contract, and no agreement between a seller and a buyer made in connection with a conditional sale contract, may provide for the inclusion of title to or a lien upon any property other than the following:
- (1) The motor vehicle which is the subject matter of the sale, including any replacement of that motor vehicle, or accessories, accessions, or replacement of those accessories or accessions, or proceeds thereof.
- (2) The proceeds of any insurance policies covering the motor vehicle which are required by the seller or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.
- (3) The proceeds of any credit insurance policies which the buyer purchases in connection with the motor vehicle conditional sale contract or the returned premiums of any such policies if the premiums for such policies are included in the amount financed; or
- (4) The proceeds and returned price of any service contract if the cost of such contract is included in the amount financed.
- (b) Subdivision (a) shall not apply to any agreement which meets the requirements of subdivision (b) of Section 2982.5 and otherwise complies with this chapter, nor, with respect to a mobilehome sold prior to July 1, 1981, to any agreement whereby a security interest is taken in real property on which the mobilehome is installed on a foundation system pursuant to Section 18551 of the Health and Safety Code.
 - (c) A provision in violation of this section shall be void.
 - (Amended Ch. 1043, Stats. 1987. Effective January 1, 1988.)
- **2984.3.** Any acknowledgment by the buyer of delivery of a copy of a conditional sale contract or purchase order and any vehicle purchase proposal and any credit

statement that the seller has required or requested the buyer to sign, and that he or she has signed, during the contract negotiations, shall be printed or written in size equal to at least 10-point boldface type and, if contained in the contract, shall appear directly above the space reserved for the buyer's signature or adjacent to any other notices required by law to be placed immediately above the signature space. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a completely filled-in copy of the contract, and a copy of the other documents shall be a rebuttable presumption of delivery in any action or proceeding by or against a third party without knowledge to the contrary when he or she acquired his or her interest in the contract. If the third party furnishes the buyer a copy of the documents, or a notice containing the disclosures identified in subdivision (a) of Section 2982, and stating that the buyer shall notify the third party in writing within 30 days if a copy of the documents was not furnished, and that notification is not given, it shall be conclusively presumed in favor of the third party that copies of the documents were furnished as required by this chapter.

(Amended Ch. 146, Stats. 1994. Effective January 1, 1995.)

2984.4. (a) An action on a contract or purchase order under this chapter shall be tried *in the superior court* in the county *where* the contract or purchase order was in fact signed by the buyer, *where* the buyer resided at the time the contract or purchase order was entered into, *where* the buyer resides at the commencement of the action, *or where* the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in **those courts if** there is at least one claim or cause of action arising from a contract subject

to this chapter.

- (b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract, conditional sale contract, or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract is permanently garaged. Otherwise, any location of the superior court designated as the proper superior court in subdivision (a) is the proper court location for the trial of the action. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.
- (c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a *superior court and court location* described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings *may occur*, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice. *The* court may, on terms *that are* just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.
 - (Amended Sec. 2, Ch. 806, Stats. 2002. Effective January 1, 2003.)

Moscone Vehicle Leasing Act

- **2985.7.** (a) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code. Motor vehicle does not include any trailer which is sold in conjunction with a vessel.
- (b) "Lessor" includes "bailor" and is a person who is engaged in the business of leasing, offering to lease or arranging the lease of a motor vehicle under a lease contract.

For the purpose of this subdivision, "person" means an individual, partnership, corporation, limited liability company, estate, trust, cooperative, association or any other legal entity.

- (c) "Lessee" includes "bailee" and is a natural person who leases, offers to lease or is offered the lease of a motor vehicle under a lease contract.
- (d) "Lease contract" means any contract for or in contemplation of the lease or bailment for the use of a motor vehicle, and the purchase of services incidental thereto,

by a natural person for a term exceeding four months, primarily for personal, family or household purposes, whether or not it is agreed that the lessee bear the risk of the motor vehicle's depreciation. Lease contract does not include a lease for agricultural, business or commercial purposes, or to a government or governmental agency or instrumentality.

- (e) "Regulation M" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the federal Consumer Leasing Act (15 U.S.C. Secs. 1667-1667e), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board to issue such interpretations or approvals.
 - (f) "Constant yield method" means the following:
- (1) In the case of a periodic payment lease, the method of determining the rent charge portion of each base payment in which the rent charge for each computational period is earned in advance by multiplying the constant rate implicit in the lease contract times the balance subject to rent charge as it declines during the scheduled lease term. At any time during the scheduled term of a periodic payment lease, the balance subject to rent charge is the difference between the adjusted capitalized cost and the sum of (A) all depreciation and other amortized amounts accrued during the preceding computational periods and (B) the first base periodic payment.
- (2) In the case of a single payment lease, the method of determining the periodic earning of rent charges in which the rent charge for each computational period is earned in advance by multiplying the constant rate implicit in the lease contract times the balance subject to rent charge as it increases during the scheduled lease term. At any time during the scheduled term of a single payment lease, the balance subject to rent charge is determined by subtracting from the residual value the total rent charge scheduled to be earned over the term of the lease contract and adding to the difference all rent charges accrued during the preceding computational periods.
- (3) Periodic rent charge calculations are based on the assumption that the lessor will receive the lease payments on their exact due dates and that the lease does not end before its scheduled termination date.

(Amended Sec. 3, Ch. 800, Stats. 1997. Effective January 1, 1998.)

- **2985.8.** (a) Every lease contract shall be in writing and the print portion of the contract shall be printed in at least eight-point type and shall contain in a single document all of the agreements of the lessor and lessee with respect to the obligations of each party.
- (b) At the top of the lease contract, a title which contains the words "LEASE CONTRACT" or "LEASE AGREEMENT" shall appear in at least 12-point bold type.
 - (c) Every lease contract shall disclose all of the following:
- (1) All of the information prescribed by Regulation M set forth in the manner required or permitted by Regulation M, whether or not Regulation M applies to the transaction.
- (2) A separate statement labeled "Itemization of Gross Capitalized Cost" that shall appear immediately following or directly adjacent to the disclosures required to be segregated by Regulation M. The Itemization of Gross Capitalized Cost shall include all of the following and shall be circumscribed by a line:
- (A) The agreed-upon value of the vehicle as equipped at the time of signing the lease.
- (B) The agreed-upon value and a description of each accessory and item of optional equipment the lessor agrees to add to the vehicle after signing the lease.
 - (C) The premium for each policy of insurance.
 - (D) The amount charged for each service contract.
 - (E) Any charge for an optional debt cancellation agreement.
 - (F) Any outstanding prior credit or lease balance.
- (G) An itemization by type and agreed-upon value of each good or service included in the gross capitalized cost other than those items included in the disclosures required in subparagraphs (A) to (F), inclusive.
 - (3) The vehicle identification number of the leased vehicle.
- (4) A brief description of each vehicle or other property being traded in and the agreed-upon value thereof if the amount due at the time of signing the lease or upon delivery is paid in whole or in part with a net trade-in allowance or the "Itemization of Gross Capitalized Cost" includes any portion of the outstanding prior credit or lease balance from the trade-in property.
- (5) The fee, if any, to be retained by the lessor for document preparation, which fee shall not exceed forty-five dollars (\$45) and shall not be represented as a governmental fee.

(d) Every lease contract shall contain, in at least eight-point bold type, above the space provided for the lessee's signature and circumscribed by a line, the following notice: "(1) Do not sign this lease before you read it or if it contains any blank spaces to be filled in; (2) You are entitled to a completely filled in copy of this lease; (3) Warning—Unless a charge is included in this lease for public liability or property damage insurance, payment for that coverage is not provided by this lease."

(e) Every lease contract shall contain, in at least eight-point bold type, on the first

page of the contract and circumscribed by a line, the following notice:

"THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle leases. Therefore, you cannot later cancel this lease simply because you change your mind, decided the vehicle costs too much, or wish you had acquired a different vehicle. You may cancel this lease only with the agreement of the lessor or for legal cause, such as fraud."

- (f) Every lease contract shall contain, in at least eight-point bold type, the following notice: "You have the right to return the vehicle, and receive a refund of any payments made if the credit application is not approved, unless nonapproval results from an incomplete application or from incorrect information provided by you."
- (g) The lease contract shall be signed by the lessor and lessee, or their authorized representatives, and an exact copy of the fully executed lease contract shall be provided to the lessee at the time of signing.
- (h) No motor vehicle shall be delivered under a lease contract subject to this chapter until the lessor provides to the lessee a fully executed copy of the lease contract.
- (i) The lessor shall not obtain the signature of the lessee to a contract when it contains blank spaces to be filled in after it has been signed.
- (j) If the lease contract contains a provision that holds the lessee liable for the difference between (1) the adjusted capitalized cost disclosed in the lease contract reduced by the amounts described in subparagraph (A) of paragraph (5) of subdivision (b) of Section 2987 and (2) the settlement proceeds of the lessee's required insurance and deductible in the event of theft or damage to the vehicle that results in a total loss, the lease contract shall contain the following notice in at least eight-point boldface type on the first page of the contract:

"GAP LIABILITY NOTICE

In the event of theft or damage to the vehicle that results in a total loss, there may be a GAP between the amount due upon early termination and the proceeds of your insurance settlement and deductible. THIS LEASE PROVIDES THAT YOU ARE LIABLE FOR THE GAP AMOUNT. Optional coverage for the GAP amount may be offered for an additional price."

(Amended Sec. 2, Ch. 287, Stats. 2001. Effective January 1, 2002.)

- **2985.9.** The following documents and agreements are not required to be contained in a lease contract:
 - (a) An "express warranty," as that term is defined in paragraph
- (1) of subdivision (a) of Section 1791.2, whether it relates to the sale or lease of a consumer good.
- (b) Titling and transfer documents utilized to register, title, or transfer ownership of vehicles described in the lease contract with government registration authorities.
 - (c) Insurance policies, service contracts, and optional debt cancellation agreements.
- (d) Documents that memorialize the sale or lease of goods or services, relating to the leased vehicle, between the provider of those goods or services and lessee that are included in the gross capitalized cost of the lease and separately itemized in the "Itemization of Gross Capitalized Cost."

(Added Sec. 3, Ch. 287, Stats. 2001. Effective January 1, 2002.)

- **2985.71.** (a) Any solicitation to enter into a lease contract that includes any of the following items shall contain the disclosures described in subdivision (b):
 - (1) The amount of any payment.
- (2) A statement of any capitalized cost reduction or other payment required prior to or at consummation or by delivery, if delivery occurs after consummation.
- (3) A statement that no capitalized cost reduction or other payment is required prior to or at consummation or by delivery, if delivery occurs after consummation.
- (b) A solicitation to enter into a lease contract that includes any item listed in subdivision (a) shall also clearly and conspicuously state all of the following items:
- (1) All of the disclosures prescribed by Regulation M set forth in the manner required or permitted by Regulation M, whether or not Regulation M applies to the transaction.

- (2) The mileage limit after which mileage charges may accrue and the charge per mile for mileage in excess of the stated mileage limit.
- (3) The statement "Plus tax and license" or a substantially similar statement, if amounts due for use tax, license fees, and registration fees are not included in the payments.
- (c) No solicitation to aid, promote, or assist directly or indirectly any lease contract may state that a specific lease of any motor vehicle at specific amounts or terms is available unless the lessor usually and customarily leases or will lease that motor vehicle at those amounts or terms.
- (d) A failure to comply with the provisions of this section shall not affect the validity of the leasing contract. No owner or employee of any entity, other than the lessor, that serves as a medium in which a lease solicitation appears or through which a lease solicitation is disseminated, shall be liable under this section.

(Repealed Sec. 4 and Added Sec. 5, Ch. 800, Stats. 1997. Effective January 1, 1998.)

2986.3. No lease contract shall contain any provision by which:

- (a) A power of attorney is given to confess judgment in this state, or an assignment of wages is given; provided that nothing herein contained shall prohibit the giving of an assignment of wages contained in a separate instrument pursuant to Section 300 of the Labor Code.
- (b) The lessee waives any right of action against the lessor or holder of the contract or other person acting on his or her behalf for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle.
- (c) The lessee relieves the lessor from liability for any legal remedies which the lessee may have against the lessor under the contract or any separate instruments executed in connection therewith.
- (d) The lessor or holder of the contract is given the right to commence action on a contract under the provisions of this chapter in a county other than the county in which the contract was in fact signed by the lessee, the county in which the lessee resides at the commencement of the action, the county in which the lessee resided at the time the contract was entered into or in the county in which the motor vehicle leased pursuant to such contract is permanently garaged.

(Amended Sec. 9, Ch. 800, Stats. 1997. Effective January 1, 1998.)

2986.4. Any acknowledgment by the lessee of delivery of a copy of a lease contract or purchase order and any vehicle lease proposal and any credit statement which the lessor has required or requested the lessee to sign, and which the lessee has signed, during the contract negotiations, shall be printed or written in size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the space reserved for the lessee's signature. The lessee's written acknowledgment, conforming to the requirements of this section, of delivery of a completely filled in copy of the contract, and a copy of such other documents shall be a rebuttable presumption of delivery in any action or proceeding by or against a third party without knowledge to the contrary when he or she acquired his or her interest in the contract. If such third party furnishes the lessee a copy of such documents, or a notice containing items set forth in subdivision (c) of Section 2985.8, and stating that the lessee shall notify such third party in writing within 30 days if he or she was not furnished a copy of such documents, and no such notification is given, it shall be conclusively presumed in favor of such a third party that copies of the documents were furnished as required by this chapter.

(Amended Sec. 10, Ch. 800, Stats. 1997. Effective January 1, 1998.)

- **2986.5.** (a) No person shall lease a used motor vehicle for operation on California highways if such vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000) of the Vehicle Code. This subdivision does not apply to an extension or a subsequent lease of the same motor vehicle to the same lessee.
- (b) If a lessee of a vehicle pays to the lessor an amount for the licensing or transfer of title of the vehicle which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the lessor to the state in order to avoid penalties that would have accrued because of late payment of such fees, the lessor shall return such excess amount to the lessee, whether or not such lessee requests the return of the excess amount.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2986.6. No agreement in connection with a lease contract which provides for the inclusion of title to or a lien upon any personal or real property, other than the motor vehicle which is the subject matter of the lease contract, or accessories therefor, or

special and auxiliary equipment used in connection therewith, as security for the payment of the contract obligations, shall be enforceable. This section does not apply to a security deposit, advance payment of rent or other cash prepayment.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

- **2986.10.** (a) An assignee of the lessor's rights is subject to all equities and defenses of the lessee against the lessor, notwithstanding an agreement to the contrary, but the assignee's liability may not exceed the amount of the obligation owing to the assignee at the time of the assignment.
- (b) The assignee shall have recourse against the lessor to the extent of any liability incurred by the assignee pursuant to this section regardless of whether the assignment was with or without recourse.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

- **2986.12.** It shall be unlawful for any lessor to induce or attempt to induce any person to enter into a contract subject to this chapter by offering a rebate, discount, commission or other consideration, on the condition that the lessee gives information or assistance for the purpose of enabling a lessor to either lease or sell a motor vehicle to another.
 - (Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)
- **2986.13.** (a) Any payment made by a lessee to a lessor pending the execution of a lease contract shall be refunded to the lessee in the event the lease contract is not executed.
- (b) In the event of breach by the lessor of a lease contract where the lessee leaves his or her motor vehicle with the lessor as a trade-in downpayment and the motor vehicle is not returned by the lessor to the lessee for whatever reason, the lessee may recover from the lessor either the fair market value of the motor vehicle left as a downpayment or its value as stated in the lease contract, whichever is greater. The recovery shall be tendered to the lessee within five business days after the breach.
- (c) The remedies of the buyer provided for in subdivision (b) are nonexclusive and cumulative and shall not preclude the lessee from pursuing any other remedy which he or she may have under any other provision of law.

(Amended Sec. 11, Ch. 800, Stats. 1997. Effective January 1, 1998.)

- **2987.** (a) A lessee has the right to terminate a lease contract at any time prior to the scheduled expiration date specified in the lease contract. Except as provided in subdivision (f), all of the following subdivisions of this section apply in the event of an early termination.
 - (b) The lessee's liability shall not exceed the sum of the following:
- (1) All unpaid periodic lease payments that have accrued up to the date of termination.
- (2) All other amounts due and unpaid by the lessee under the lease contract, other than excess wear and mileage charges and unpaid periodic lease payments.
- (3) Any charges, however denominated, that the lessor or holder of the lease contract may assess in connection with termination not to exceed in the aggregate the amount of a reasonable disposition fee, if any, disclosed in the lease contract and assessed upon termination of the lease contract.
- (4) In the event of the lessee's default, reasonable fees paid by the lessor or holder for reconditioning of the leased vehicle and reasonable and necessary fees paid by the lessor or holder, if any, in connection with the repossession and storage of the leased vehicle.
- (5) The difference, if any, between the adjusted capitalized cost disclosed in the lease contract and the sum of (A) all depreciation and other amortized amounts accrued through the date of early termination, calculated in accordance with the constant yield or other generally accepted actuarial method, and (B) the realized value of the vehicle as provided in subdivision (c).
- (c) Subject to subdivision (d), the realized value of the vehicle used to calculate the lessee's liability under paragraph (5) of subdivision (b) shall be (1) if the lessee maintains insurance on the leased vehicle as required in the lease contract and the vehicle is a total loss as a result of theft or damage, the amount of any applicable insurance deductible owed by the lessee and the proceeds of the settlement of the insurance claim, unless a higher amount is agreed to by the holder of the lease contract, (2) if the lessee elects to have an appraisal conducted as provided in Regulation M, the value determined on appraisal, (3) if the holder of the lease contract or lessor elects to retain ownership of the vehicle for use or to lease to a subsequent lessee, the wholesale value of the vehicle as specified in the current edition of a recognized used vehicle value guide customarily used by California motor vehicle

dealers to value vehicles in this state, including, but not limited to, the Kelley Blue Book Auto Market Report and the N.A.D.A. Official Used Car Guide, or (4) under all other circumstances, the higher of (A) the price paid for the vehicle upon disposition, or (B) any other amount established by the lessor or the lease contract.

(d) (1) The lessor or holder of the lease contract shall act in good faith and in a commercially reasonable manner in connection with the disposition of the vehicle.

(2) In addition to the requirements of paragraph (1), any disposition of the vehicle

shall be preceded by a notice complying with both of the following:

(A) The notice shall be in writing and given by the holder of the contract to each lessee and guarantor at least 10 days in advance of any disposition or the date by which the value of the vehicle will be determined pursuant to paragraph (3) of subdivision (c). The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of each lessee and guarantor. One notice is sufficient if those persons are married to each other and the most recent records of the holder of the lease contract indicate that they reside at the same address. The last known address of each lessee and guarantor shall be presumed to be the address stated in the lease contract or guaranty for each lessee and guarantor unless the lessee or guarantor notifies the holder of the lease contract of a change of address.

(B) The notice shall set forth (i) the time and place of any public sale, the time on or after which a private sale or other intended disposition is to be made, or the date by which the value of the vehicle will be determined pursuant to paragraph (3) of subdivision (c), (ii) an itemization of all amounts claimed under paragraphs (1) to (4), inclusive, of subdivision (b), (iii) the amount of the difference between the adjusted capitalized cost and the sum of all depreciation and other amortized amounts paid through the date of early termination as provided in paragraph (5) of subdivision (b), (iv) the total of these amounts identified as the "Gross Early Termination Amount,"

and (v) one of the following statements, whichever is applicable:

[To be inserted when the realized value will be determined pursuant to paragraph (3) of subdivision (c)]

"The amount you owe for early termination will be no more than the difference between the Gross Early Termination Amount stated above and (1) the appraised value of the vehicle or (2) if there is no appraisal, the wholesale value specified in a recognized used vehicle value guide.

You have the right to get a professional appraisal to establish the value of the vehicle for the purpose of figuring how much you owe on the lease. If you want an appraisal, you will have to arrange for it to be completed at least three days before the scheduled valuation date. The appraiser has to be an independent person acceptable to the holder of the lease. You will have to pay for the appraiser. The appraised value will be considered final and binding on you and the holder of the lease."

[To be inserted in all other circumstances]

"The amount you owe for early termination will be no more than the difference between the Gross Early Termination Amount stated above and (1) the appraised value of the vehicle or (2) if there is no appraisal, either the price received for the vehicle upon disposition or a greater amount established by the lessor or the lease contract.

You have the right to get a professional appraisal to establish the value of the vehicle for the purpose of figuring how much you owe on the lease. If you want an appraisal, you will have to arrange for it to be completed at least three days before the scheduled sale date of the vehicle. The appraiser has to be an independent person acceptable to the holder of the lease. You will have to pay for the appraiser. The appraised value will be considered final and binding on you and the holder of the lease."

(3) The lessee shall have no liability under subdivision (b) if the lessor or holder of the lease contract does not comply with this subdivision. This paragraph does not apply under all the following conditions:

(A) Noncompliance was the result of a bona fide error in stating an amount required to be disclosed pursuant to clause (ii), (iii), or (iv) of subparagraph (B) of paragraph (2).

- (B) The holder of the lease gives the lessee written notice of the error within 30 days after discovering the error and before (i) an action is filed to recover the amount claimed to be owed or (ii) written notice of the error is received by the holder of the lease from the lessee.
- (C) The lessee is liable for the lesser of the originally claimed amount or the correct amount.
- (D) The holder of the lease refunds any amount collected in excess of the amount described in subparagraph (C) within 10 days after notice of the error is given. "Bona $\,$

fide error," as used in this paragraph, means an error that was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid that error. Examples of a bona fide error include clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry, and printing errors, but does not include an error of legal judgment with respect to a lessor's or lease contractholder's obligations under this section.

(4) This subdivision does not apply when the lessee maintains insurance on the leased vehicle as required in the lease contract and the vehicle is declared a total loss

by the insurer as a result of theft or damage.

- (e) The lessor or holder of the lease contract shall credit any security deposit or advance rental payment held by the lessor or holder of the lease contract against the lessee's liability under the lease contract as limited by this section. The portion of a security deposit or advance rental payment, if any, remaining after the lessee's liability under the lease contract as limited by this section has been satisfied shall be returned to the lessee within 30 days of the satisfaction of the obligation.
- (f) Subdivisions (b) to (d), inclusive, do not apply if, prior to the scheduled expiration date specified in the lease contract, the lessee terminates the lease and purchases the vehicle or trades in the vehicle in connection with the purchase or lease of another vehicle. In such an event, the selling price of the leased vehicle, exclusive of taxes and other charges incidental to the sale, shall not exceed the sum of the following and shall relieve the lessee of any further liability under the lease contract:
- (1) All unpaid periodic lease payments that have accrued up to the date of termination.
- (2) All other amounts due and unpaid by the lessee under the lease contract, other than excess wear and mileage charges and unpaid periodic lease payments.
- (3) Any charges, however denominated, that the lessor or holder of the lease contract may assess in connection with termination of the lease contract and the acquisition of the vehicle, not to exceed in the aggregate the amount of a reasonable purchase option fee, if any, disclosed in the lease contract and assessed upon the scheduled termination of the lease contract.
- (4) The adjusted capitalized cost disclosed in the lease contract less all depreciation and other amortized amounts accrued through the date of early termination, calculated in accordance with the constant yield or other generally accepted actuarial method
- (g) If the lessee terminates a lease contract, voluntarily returns possession of the vehicle to the lessor, and timely pays all sums required under the lease contract as limited by this section, the lessor or holder shall not provide any adverse information concerning the early termination to any consumer credit reporting agency.
 - (h) The Rule of 78 shall not be used to calculate accrued rent charges.
- (i) This section shall only apply to lease contracts entered into on and after January 1. 1998.

(Amended Sec. 12, Ch. 800, Stats. 1997. Effective January 1, 1998.)

- **2988.** (a) The Legislature finds that it is necessary to provide some protection for consumers who enter into lease contracts in which the lessee will bear the risk of the motor vehicle's depreciation. This section is intended to provide relief to the consumer when an ostensibly inexpensive lease contract establishes an excessively low level of periodic payment which results, conversely, in an excessively high liability being imposed on the lessee at the expiration of the lease term because the lessor has failed to act in good faith in either estimating a residual value of the motor vehicle or establishing a level of periodic payment which bears no reasonable relation to the motor vehicle's reasonably expected depreciation during the lease term. Therefore, the lessor will have the obligation to act in good faith and to come forward with competent evidence showing that the estimated residual value was so determined given the circumstances existing at the inception of the lease contract.
- (b) Where the lessee is to bear the risk of the motor vehicle's depreciation and the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the motor vehicle such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the motor vehicle on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. The presumption stated in the preceding sentence shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the motor vehicle beyond reasonable wear and use, or to excessive use, and

the lease may set standards for such wear and use if such standards are not unreasonable.

(c) For the purposes of this chapter, "fair market value" means the value the motor vehicle would have when sold in a commercially reasonable manner in the customary market for such motor vehicle.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

- **2988.5.** (a) Except as otherwise provided by this section, any lessor who fails to comply with any requirement imposed under Section 2985.8 or 2988 for which no specific relief is provided with respect to any person shall be liable to such person in an amount equal to the sum of:
 - (1) Any actual damages sustained by such person as a result of the failure.
- (2) In the case of an individual action, 25 percent of the total amount of monthly payments under the lease except that liability under this subparagraph shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000); or in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of five hundred thousand dollars (\$500,000) or 1 percent of the net worth of the lessor.
- (3) The costs of the action, together with a reasonable attorney's fee as determined by the court.
- (b) In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages sustained, the frequency and persistence of failure of compliance by the lessor, the resources of the lessor, the number of persons adversely affected, and the extent to which the lessor's failure of compliance was intentional.
- (c) A lessor shall not be liable under this section if within 15 days after discovery of an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the lessor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay any amount in excess of the amount that should correctly have been disclosed.
- (d) A lessor may not be held liable in any action brought under this section for a violation of this chapter if the lessor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.
- (e) Except as otherwise specifically provided in this chapter, any civil action for a violation of this chapter which may be brought against the original lessor in any lease transaction may be maintained against any subsequent assignee of the original lessor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.
- (f) A person may not take any action to offset any amount for which a lessor is potentially liable to such person under paragraph (2) of subdivision (a) against any amount owing to such lessor by such person, unless the amount of the lessor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.
- (g) No provision of this section imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation or interpretation of federal law, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.
- (h) The multiple failure to disclose any information required under this chapter to be disclosed in connection with a single lease transaction shall entitle the person to a single recovery under this section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.
- (i) Actions alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease contract.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2988.7. If the lessor fails to comply with Section 2985.8, as an alternative to an action under Section 2988.5, the lessee may rescind the contract if the failure to comply was willful, or if correction will increase the amount of the contract balance, unless the lessor waives the collection of the increased amount.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2988.9. Reasonable attorney's fees and costs shall be awarded to the prevailing

party in any action on a lease contract subject to the provisions of this chapter regardless of whether the action is instituted by the lessor, assignee or lessee. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be prevailing party within the meaning of this action.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2989. No civil action shall be filed against a lessor under the authority of this chapter if a federal civil action has previously been filed based on facts that give rise to a similar cause of action under this chapter.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2989.2. Where the lessee is to bear the risk of the motor vehicle's depreciation upon the scheduled expiration of the lease contract, the following applies:

(a) When disposing of a vehicle or obtaining cash bids for the purpose of setting the fair market value of a vehicle, the lessor shall act in a commercially reasonable

manner in the customary market for such vehicle.

(b) Any provision in a lease contract to the contrary notwithstanding, at least 10 days written notice of intent to sell such motor vehicle shall be given by the holder of the contract to each lessee and guarantor, unless the lessor and lessee have agreed in writing to the amount of the lessee's liability under the lease contract after the lessee returns the motor vehicle to the lessor, or the lessee has satisfied the lease contract obligations by payment to the lessor. The notice shall be personally served or shall be sent by certified mail, return receipt requested, directed to the address of the lessee shown on the contract, unless the lessee has notified the holder in writing of a different address. The notice shall set forth separately any charges or sums due and state that the lessee will be liable for the difference between the amount of liability imposed on the lessee at the expiration of the lease term and the actual cash value of the motor vehicle when it is sold. The notice shall also state that the lessee has the right to submit a cash bid for the purchase of the vehicle.

(Amended Sec. 13, Ch. 800, Stats. 1997. Effective January 1, 1998.)

2989.4. (a) A lessor shall not:

(1) Fail to register the leased vehicle pursuant to the lease contract.

(2) Advertise any specific vehicle in the inventory of the lessor for lease without identifying such vehicle by either its vehicle identification number or license number.

(3) Refuse to lease a vehicle to any creditworthy person at the advertised total price, exclusive of sales tax, vehicle registration fees and finance charges.

(b) Notwithstanding Section 2988.5, a lessor shall not suffer civil liability for a violation of this section.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

- **2989.5.** (a) Except as provided in subdivision (c), a lessor shall make available to investigators of the Department of Motor Vehicles, upon presentation of an affidavit that the department has a consumer complaint within its jurisdiction, the records relevant to the transaction complained of. If the affidavit states that the department has reasonable cause to believe there is a pattern of conduct or common scheme in similar transactions, the records relevant to all such similar transactions shall be made available.
- (b) Except as provided in subdivision (c), on petition of the department alleging the receipt of a consumer complaint within its jurisdiction and alleging that the lessor refuses to make available his records as required, the court shall order the lessor to make available such records or show cause why such records should not be produced. The department shall be awarded reasonable attorney's fees and costs if it prevails in such action.
- (c) (1) In the case of a financial institution, or a subsidiary or affiliated corporation of such institution, the Director of Motor Vehicles shall report in writing an apparent violation, or failure to comply with this chapter, evidenced by a consumer complaint, to the agency or department of the state or federal government responsible for supervising the leasing activities of such institution.

(2) Within 20 days, such agency or department shall advise the director of the action taken with respect to such report.

(3) If such agency or department fails to so advise the director, the director may commence an action to compel the agency or department to cause the production of the records relevant to the consumer complaint.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2989.6. The Director of Motor Vehicles may adopt and enforce rules and regulations as may be necessary to carry out or implement the provisions of this chapter.

Rules and regulations shall be adopted, amended or repealed in accordance with Chapter 4.5 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the

Government Code.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2989.8. Any person who shall knowingly and willfully violate any provision of this chapter shall be guilty of a misdemeanor.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2990. This chapter shall not apply to any transaction which is regulated by Chapter 2b (commencing with Section 2981) of this title.

(Added Ch. 1284, Stats. 1976. Operative March 23, 1977.)

2991. Any prospective assignee that provides a lessor under a lease contract with any preprinted form for use as a lease contract shall, upon the request of a lessor, provide the lessor with a Spanish language translation of the preprinted form.

(Added Sec. 1, Ch. 235, Stats. 1999. Effective January 1, 2000. Operative January 1, 2001.)

2992. A prospective assignee that provides a lessor under a lease contract with a preprinted form for use as a lease contract shall design the form in such a manner so as to provide on its face sufficient space for the lessor to include all disclosures and itemizations required pursuant to Section 2985.8 and shall also contain on its face a separate blank space no smaller than seven and one-half square inches for the lessor and lessee to memorialize trade-in, turn-in, and other individualized agreements.

(Added Sec. 4, Ch. 287, Stats. 2001. Effective January 1, 2002.)

Liens on Vehicles

- **3067.** Words used in this chapter which are defined in Division 1 of the Vehicle Code shall have the same meaning as in the Vehicle Code.
- **3067.1.** All forms required pursuant to the provisions of this chapter shall be prescribed by the Department of Motor Vehicles. The language used in the notices and declarations shall be simple and nontechnical.

(Added Ch. 1111, Stats. 1980. Effective January 1, 1981.)

3067.2. This chapter shall not apply to any manufactured home, as defined in Section 18007 of the Health and Safety Code, to any mobilehome, as defined in Section 18008 of the Health and Safety Code, or to any commercial coach, as defined in Section 18001.8 of the Health and Safety Code, whether or not the manufactured home, mobilehome, or commercial coach is subject to registration under the Health and Safety Code.

(Added Ch. 1124, Stats. 1983. Effective January 1, 1984.)

- **3068.** (a) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair, or safekeeping of, and for the rental of parking space for, any vehicle of a type subject to registration under the Vehicle Code, subject to the limitations set forth in this chapter. The lien shall be deemed to arise at the time a written statement of charges for completed work or services is presented to the registered owner or 15 days after the work or services are completed, whichever occurs first.
- (b) (1) Any lien under this section that arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished and no lien sale shall be conducted unless either of the following occurs:
- (A) The lienholder applies for an authorization to conduct a lien sale within 30 days after the lien has arisen.
 - (B) An action in court is filed within 30 days after the lien has arisen.
- (2) A person whose lien for work or services on a vehicle has been extinguished shall turn over possession of the vehicle, at the place where the work or services were performed, to the legal owner or the lessor upon demand of the legal owner or lessor, and upon tender by the legal owner or lessor, by cashiers check or in cash, of only the amount for storage, safekeeping, or parking space rental for the vehicle to which the person is entitled by subdivision (c).
- (3) Any lien under this section that arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished, and no lien sale shall be conducted, if the lienholder, after written demand made by

either personal service or certified mail with return receipt requested by the legal owner or the lessor to inspect the vehicle, fails to permit that inspection by the legal owner or lessor, or his or her agent, within a period of time not sooner than 24 hours nor later than 72 hours after the receipt of that written demand, during the normal business hours of the lienholder.

(c) The lienholder shall not charge the legal owner or lessor any amount for release

of the vehicle in excess of the amounts authorized by this subdivision.

(1) That portion of the lien in excess of seven hundred fifty dollars (\$750) for any work or services, or that amount in excess of four hundred dollars (\$400) for any storage, safekeeping, or rental of parking space or, if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071 within 30 days after the commencement of the storage or safekeeping, in excess of five hundred dollars (\$500) for any storage or safekeeping, rendered or performed at the request of any person other than the legal owner or lessor, is invalid, unless prior to commencing any work, services, storage, safekeeping, or rental of parking space, the person claiming the lien gives actual notice in writing either by personal service or by registered letter addressed to the legal owner named in the registration certificate, and the written consent of that legal owner is obtained before any work, services, storage, safekeeping, or rental of parking space are performed.

(2) If any portion of a lien includes charges for the care, storage, or safekeeping of, or for the rental of parking space for, a vehicle for a period in excess of 60 days, the portion of the lien that accrued after the expiration of that period is invalid unless Sections 10650 and 10652 of the Vehicle Code have been complied with by the holder

of the lien.

- (3) The charge for the care, storage, or safekeeping of a vehicle which may be charged to the legal owner or lessor shall not exceed that for one day of storage if, 24 hours or less after the vehicle is placed in storage, a request is made for the release of the vehicle. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full, calendar-day basis for each day, or part thereof, that the vehicle is in storage.
- (d) In any action brought by or on behalf of the legal owner or lessor to recover a vehicle alleged to be wrongfully withheld by the person claiming a lien pursuant to this section, the prevailing party shall be entitled to reasonable attorneys fees and costs, not to exceed one thousand seven hundred fifty dollars (\$1,750).

(Amended Ch. 799, Stats. 1994. Effective January 1, 1995.)

- ${\bf 3068.1.}$ (a) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for towing, storage, or labor associated with recovery or load salvage of any vehicle subject to registration that has been authorized to be removed by a public agency, a private property owner pursuant to Section 22658 of the Vehicle Code, or a lessee, operator, or registered owner of the vehicle. The lien is deemed to arise on the date of possession of the vehicle. Possession is deemed to arise when the vehicle is removed and is in transit, or when vehicle recovery operations or load salvage operations have begun. A person seeking to enforce a lien for the storage and safekeeping of a vehicle shall impose no charge exceeding that for one day of storage if, 24 hours or less after the vehicle is placed in storage, the vehicle is released. If the release is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full, calendar-day basis for each day, or part thereof, that the vehicle is in storage. If a request to release the vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's charge may be required to be paid until after the first business day. A "business day" is any day in which the lienholder is open for business to the public for at least eight hours. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a fullcalendar day basis for each day, or part thereof, that the vehicle is in storage.
- (b) If the vehicle has been determined to have a value not exceeding four thousand dollars (\$4,000), the lien shall be satisfied pursuant to Section 3072. Lien sale proceedings pursuant to Section 3072 shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien sale proceedings pursuant to Section 3072 have commenced. The storage lien may be for a period not exceeding 60 days if a completed notice of a pending lien sale form has been filed pursuant to Section 3072 within 15 days after the lien arises. Notwithstanding

this 60-day limitation, the storage lien may be for a period not exceeding 120 days if any one of the following occurs:

- (1) A Declaration of Opposition is filed with the department pursuant to Section 3072.
 - (2) The vehicle has an out-of-state registration.
 - (3) The vehicle identification number was altered or removed.
- (4) A person who has an interest in the vehicle becomes known to the lienholder after the lienholder has complied with subdivision (b) of Section 3072.
- (c) If the vehicle has been determined to have a value exceeding four thousand dollars (\$4,000) pursuant to Section 22670 of the Vehicle Code, the lien shall be satisfied pursuant to Section 3071. The storage lien may be for a period not exceeding 120 days if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071.
 - (d) Any lien under this section shall be extinguished, and no lien sale shall be

conducted, if any one of the following occurs:

- (1) The lienholder, after written demand to inspect the vehicle made by either personal service or certified mail with return receipt requested by the legal owner or the lessor, fails to permit the inspection by the legal owner or lessor, or his or her agent, within a period of time of at least 24 hours, but not to exceed 72 hours, after the receipt of that written demand, during the normal business hours of the lienholder. The legal owner or lessor shall comply with inspection and vehicle release policies of the impounding public agency.
 - (2) The amount claimed for storage exceeds the posted rates. (Amended Sec. 1, Ch. 203, Stats. 1998. Effective January 1, 1999.)
- **3068.2.** (a) A tow truck operator who has a lien on a vehicle pursuant to Section 3068.1 has a deficiency claim against the registered owner of the vehicle if the vehicle is not leased or leased with a driver for an amount equal to the towing and storage charges, not to exceed 120 days of storage, and the lien sale processing fee pursuant to Section 3074, less the amount received from the sale of the vehicle. (b) A tow truck operator who has a lien on a vehicle pursuant to Section 3068.1 has a deficiency claim against the lessee of the vehicle if the vehicle is leased without a driver for an amount equal to the towing and storage charge, not to exceed 120 days of storage, and the lien sale processing fee described in Section 3074, less the amount received from the sale of the vehicle. (c) Storage costs incurred after the sale shall not be included in calculating the amount received from the sale of the vehicle. (d) A registered owner who has sold or transferred his or her vehicle prior to the vehicle's removal and who was not responsible for creating the circumstances leading to the removal of the vehicle is not liable for any deficiency under this section if that registered owner executes a notice pursuant to Section 5900 of the Vehicle Code and submits the notice to the Department of Motor Vehicles. The person identified as the transferee in the notice submitted to the Department of Motor Vehicles shall be liable for the amount of any deficiency only if that person received notice of the transfer and is responsible for the event leading to abandonment of the vehicle or requested the removal. (e) Except as provided in Section 22524.5 of the Vehicle Code, if the transferee is an insurer and the transferor is its insured or his or her agent or representative, the insurer shall not be liable for any deficiency, unless the insurer agrees at the time of the transfer, to assume liability for the deficiency.
- **3069.** Any lien provided for in this chapter for labor or materials, or for storage or safekeeping of a vehicle when abandoned on private property may be assigned by written instrument accompanied by delivery of possession of the vehicle, subject to the lien, and the assignee may exercise the rights of a lienholder as provided in this chapter. Any lienholder assigning a lien as authorized herein shall at the time of assigning the lien give written notice either by personal delivery or by registered or certified mail, to the registered and legal owner of the assignment, including the name and address of the person to whom the lien is assigned.

(Amended Ch. 125, Stats. 1969. Effective November 10, 1969.)

- **3070.** (a) Whenever the possessory lien upon any vehicle is lost through trick, fraud, or device, the repossession of the vehicle by the lienholder revives the possessory lien but any lien so revived is subordinate to any right, title, or interest of any person under any sale, transfer, encumbrance, lien, or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.
- (b) It is a misdemeanor for any person to obtain possession of any vehicle or any part thereof subject to a lien pursuant to this chapter by trick, fraud, or device.

- (c) It is a misdemeanor for any person claiming a lien on a vehicle to knowingly violate this chapter.
- (d) (1) Any person who improperly causes a vehicle to be towed or removed in order to create or acquire a lienhold interest enforceable under this chapter, or who violates subdivision (c), shall forfeit all claims for towing, removal, or storage, and shall be liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage, damages resulting from the towing, removal, transportation, or storage of the vehicle, attorney's fees, and court costs.
- (2) For purposes of this subdivision, "improperly causes a vehicle to be towed or removed" includes, but is not limited to, engaging in any of the following acts, the consequence of which is the towing or removal of a vehicle:
 - (A) Failure to comply with Section 10650, 10652.5, or 10655 of the Vehicle Code.
- (B) Misrepresentation of information described in subdivision (b) of Section 10650 of the Vehicle Code.
 - (C) Failure to comply with Section 22658 of the Vehicle Code.
- (D) Failure, when obtaining authorization for the removal of a vehicle from a vehicle owner or operator where a law enforcement officer is not present at the scene of an accident, to present a form for signature that plainly identifies all applicable towing and storage fees and charges by type and amount, and identifies the name and address of the storage facility unless a different storage facility is specified by the vehicle owner or operator, and to furnish a copy of the signed form to the owner or operator.
- (E) Failure by the owner or operator of a facility used for the storage of towed vehicles to display, in plain view at all cashiers' stations, a sign not less than 17 by 22 inches in size with lettering not less than one inch in height, disclosing all storage fees and charges in force, including the maximum daily storage rate.
- (F) Undertaking repairs or service on a vehicle which is being stored at a facility used for the storage of towed vehicles without first providing a written estimate to, and obtaining the express written consent of, the owner of the vehicle.
- (G) The promise to pay or the payment of money or other valuable consideration by any owner or operator of a towing service to the owner or operator of the premises from which the vehicle is towed or removed, for the privilege of towing or removing the vehicle.
 - (Amended Ch. 799, Stats. 1994. Effective January 1, 1995.)
- **3071.** (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over four thousand dollars (\$4,000). A filing fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:
- (1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number also shall be included. If the vehicle identification number is not available, the department shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before accepting the application.
- (2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from the registration certificates within the vehicle, and the name and address of any person whom the lienholder knows, or reasonably should know, claims an interest in the vehicle.
 - (3) A statement of the amount of the lien and the facts that give rise to the lien.
- (b) Upon receipt of an application made pursuant to subdivision (a), the department shall do all of the following:
- (1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the vehicle bears indicia of registration in that state.
- (2) By certified mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.
- (c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:
- (1) An application has been made with the department for authorization to conduct a lien sale.
 - (2) The person has a right to a hearing in court.
- (3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of

the date that the notice required pursuant to subdivision (b) was mailed.

- (4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment, if he or she obtains a subsequent release from the declarant or if the declarant, cannot be served as described in subdivision (e).
- (5) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.
- (6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.
- (d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).
- (e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the department of the inability to effect service on the declarant and shall provide the department with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the department shall send authorization of the sale to the lienholder and send notification of the authorization to the declarant.
- (f) Upon receipt of authorization to conduct the lien sale from the department, the lienholder shall immediately do all of the following:
- (1) At least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located. If there is no newspaper published in the county, notice shall be given by posting a Notice of Sale form in three of the most public places in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10 consecutive days prior to and including the day of the sale.
- (2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the day of sale, by certified mail with return receipt requested, to each of the following:
 - (A) The registered and legal owners of the vehicle, if registered in this state.
 - (B) All persons known to have an interest in the vehicle.
 - (C) The department.
- (g) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, year model, vehicle identification number, license number, and state of registration, if available, and the specific date, exact time, and place of sale. For motorcycles, the engine number shall also be included.
- (h) Following the sale of a vehicle, the person who conducts the sale shall do both of the following:
 - (1) Remove and destroy the vehicle"s license plates.
- (2) Within five days of the sale, submit a completed "Notice of Release of Liability" form to the Department of Motor Vehicles.
- (i) The Department of Motor Vehicles shall retain all submitted forms described in paragraph (2) of subdivision (h) for two years.
- (j) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

- (k) Within 10 days after the sale of any vehicle pursuant to this section, the legal or registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum from the due date thereof or the date when that sum was advanced until the repayment. If the vehicle is not redeemed, all lien sale documents required by the department shall then be completed and delivered to the buyer.
- (*I*) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.5 of the Vehicle Code.

(Amended Sec. 1, Ch. 127, Stats. 2001. Effective July 30, 2001.)

- **3071.5.** (a) A registered or legal owner of a vehicle in the possession of a person holding a lien under this chapter may release any interest in the vehicle after the lien has arisen. The release shall be dated when signed and a copy shall be given at the time the release is signed to the person releasing the interest.
- (b) The release shall be in at least 12-point type and shall contain all of the following information in simple, nontechnical language:
- (1) A description of the vehicle, including the year and make, the engine or vehicle identification number, and the license number, if available.
- (2) The names and addresses of the registered and legal owners of record with the Department of Motor Vehicles, if available.
- (3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.
- (4) A statement that the person releasing the interest understands that (i) he has a legal right to a hearing in court prior to any sale of the vehicle to satisfy the lien and (ii) he is giving up the right to appear to contest the claim of the lienholder.
- (5) A statement that (i) the person releasing the interest gives up any interest he may have in the vehicle and (ii) he is giving the lienholder permission to sell the vehicle.
- (c) The release required by this section shall not be filed with the department in connection with any transfer of interest in a vehicle.

(Amended Ch. 1005, Stats. 1978. Effective January 1, 1979.)

- **3072.** (a) For vehicles with a value determined to be four thousand dollars (\$4,000) or less, the lienholder shall apply to the department for the names and addresses of the registered and legal owners of record. The request shall include a description of the vehicle, including make, year, model, identification number, license number, and state of registration. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before releasing the names and addresses of the registered and legal owners and interested parties.
- (b) The lienholder shall, immediately upon receipt of the names and addresses, send, by certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, a completed Notice of Pending Lien Sale form, a blank Declaration of Opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, and to any other person known to have an interest in the vehicle. The lienholder shall additionally send a copy of the completed Notice of Pending Lien Sale form to the department by certified mail on the same day that the other notices are mailed pursuant to this subdivision.
- (c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following information and statements:
- (1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.
- (2) The specific date, exact time, and place of sale, which shall be set not less than 31 days, but not more than 41 days, from the date of mailing.
- (3) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(4) All of the following statements:

- (A) The amount of the lien and the facts concerning the claim which gives rise to the lien.
 - (B) The person has a right to a hearing in court.
- (C) If a court hearing is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date the Notice of Pending Lien Sale form was mailed.

- (D) If the Declaration of Opposition form is signed and returned, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant or if the declarant cannot be served as described in subdivision (e).
- (E) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.
- (F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.
- (d) If the department receives the completed Declaration of Opposition form within the time specified, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the notice and judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).
- (e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the Department of Motor Vehicles with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the Department of Motor Vehicles shall send authorization of the sale to the lienholder and shall send notification of the authorization to the declarant.
- (f) At least 10 consecutive days prior to and including the day of the sale, the lienholder shall post a Notice of Pending Lien Sale form in a conspicuous place on the premises of the business office of the lienholder and if the pending lien sale is scheduled to occur at a place other than the premises of the business office of the lienholder, at the site of the forthcoming sale. The Notice of Pending Lien Sale form shall state the specific date and exact time of the sale and description of the vehicle, including the make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included. The notice of sale shall remain posted until the sale is completed.
- (g) Following the sale of a vehicle, the person who conducts the sale shall do both of the following:
 - (1) Remove and destroy the vehicle's license plates.
- (2) Within five days of the sale, submit a completed "Notice of Release of Liability" form with the Department of Motor Vehicles.
- (h) The Department of Motor Vehicles shall retain all submitted forms described in paragraph (2) of subdivision (g) for two years.
- (i) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner. All lien sale documents required by the department shall be completed and delivered to the buyer immediately following the sale.
- (j) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.5 of the Vehicle Code.

(Amended Sec. 2, Ch. 127, Stats. 2001. Effective July 30, 2001.)

- **3073.** The proceeds of a vehicle lien sale under this article shall be disposed of as follows:
- (a) The amount necessary to discharge the lien and the cost of processing the vehicle shall be paid to the lienholder. The cost of processing shall not exceed seventy dollars (\$70) for each vehicle valued at four thousand dollars (\$4,000) or less, or one hundred

dollars (\$100) for each vehicle valued over four thousand dollars (\$4,000).

- (b) The balance, if any, shall be forwarded to the Department of Motor Vehicles within 15 days of any sale conducted pursuant to Section 3071 or within five days of any sale conducted pursuant to Section 3072 and deposited in the Motor Vehicle Account in the State Transportation Fund, unless federal law requires these funds to be disposed in a different manner.
- (c) Åny person claiming an interest in the vehicle may file a claim with the Department of Motor Vehicles for any portion of the funds from the lien sale that were forwarded to the department pursuant to subdivision (b). Upon a determination of the Department of Motor Vehicles that the claimant is entitled to an amount from the balance deposited with the department, the department shall pay that amount determined by the department, which amount shall not exceed the amount forwarded to the department pursuant to subdivision (b) in connection with the sale of the vehicle in which the claimant claims an interest. The department shall not honor any claim unless the claim has been filed within three years of the date the funds were deposited in the Motor Vehicle Account.

(Amended Sec. 4, Ch. 203, Stats. 1998. Effective January 1, 1999.)

3074. The lienholder may charge a fee for lien sale preparations not to exceed seventy dollars (\$70) in the case of a vehicle having a value determined to be four thousand dollars (\$4,000) or less and not to exceed one hundred dollars (\$100) in the case of a vehicle having a value determined to be greater than four thousand dollars (\$4,000), from any person who redeems the vehicle prior to disposal or is paid through a lien sale pursuant to this chapter. These charges may commence and become part of the possessory lien when the lienholder requests the names and addresses of all persons having an interest in the vehicle from the Department of Motor Vehicles. Not more than 50 percent of the allowable fee may be charged until the lien sale notifications are mailed to all interested parties and the lienholder or registration service agent has possession of the required lien processing documents. This charge shall not be made in the case of any vehicle redeemed prior to 72 hours from the initial storage.

(Amended Sec. 5, Ch. 203, Stats. 1998. Effective January 1, 1999.)

3075. The procedures described in this chapter shall not be applicable if the vehicle is a mobilehome as defined in Section 396 of the Vehicle Code. A lien sale of a mobilehome may be conducted only if a judgment has been entered in favor of the lienholder.

(Repealed and Added, Ch. 1111, Stats. 1980. Effective January 1, 1981.)

Unlawful Subleasing

- **3343.5.** (a) Any one or more of the following who suffers any damage proximately resulting from one or more acts of unlawful motor vehicle subleasing, as described in Chapter 12.7 (commencing with Section 570) of Title 13 of Part 1 of the Penal Code, may bring an action against the person who has engaged in those acts:
- (1) A seller or other secured party under a conditional sale contract or a security agreement.
 - (2) A lender under a direct loan agreement.
 - (3) A lessor under a lease contract.
 - (4) A buyer under a conditional sale contract.
- (5) A purchaser under a direct loan agreement, an agreement which provides for a security interest, or an agreement which is equivalent to these types of agreements.
 - (6) A lessee under a lease contract.
- (7) An actual or purported transferee or assignee of any right or interest of a buyer, a purchaser, or a lessee.
- (b) The court in an action under subdivision (a) may award actual damages; equitable relief, including, but not limited to, an injunction and restitution of money and property; punitive damages; reasonable attorney's fees and costs; and any other relief which the court deems proper.
 - (c) As used in this section, the following terms have the following meanings:
 - (1) "Buyer" has the meaning set forth in subdivision (c) of Section 2981.
- (2) "Conditional sale contract" has the meaning set forth in subdivision (a) of Section 2981. Notwithstanding subdivision (k) of Section 2981, "conditional sale contract" includes any contract for the sale or bailment of a motor vehicle between a buyer and a seller primarily for business or commercial purposes.
- (3) "Direct loan agreement" means an agreement between a lender and a purchaser whereby the lender has advanced funds pursuant to a loan secured by the motor vehicle which the purchaser has purchased.

- (4) "Lease contract" means a lease contract between a lessor and lessee as this term and these parties are defined in Section 2985.7. Notwithstanding subdivision (d) of Section 2985.7, "lease contract" includes a lease for business or commercial purposes.
- (5) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code.
- (6) "Person" means an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.

(7) "Purchaser" has the meaning set forth in subdivision (33) of Section 1201 of the Commercial Code.

(8) "Security agreement" and "secured party" have the meanings set forth, respectively, in paragraphs (73) and (72) of subdivision (a) of Section 9102 of the Commercial Code. "Security interest" has the meaning set forth in subdivision (37) of Section 1201 of the Commercial Code.

(9) "Seller" has the meaning set forth in subdivision (b) of Section 2981, and includes the present holder of the conditional sale contract.

(d) The rights and remedies provided in this section are in addition to any other

rights and remedies provided by law.
(Amended Sec. 8.5, Ch. 991, Stats. 1999. Effective January 1, 2000. Operative July 1, 2001.)

Nuisance and Method of Abatement

3479. Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

(Amended Sec. 1, Ch. 658, Stats. 1996. Effective January 1, 1997.)

3502. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.